Mathew K. Higbee, SBN 11133 Ryan E. Carreon, *Pro Hac Vice* **HIGBEE & ASSOCIATES**1504 Brookhollow Drive, Suite #112
Santa Ana, CA 92705
(714) 617-8373
<a href="mailto:mhigbee@higbee.law">mhigbee@higbee.law</a>
rcarreon@higbee.law

Attorneys for Plaintiff Trunk Archive

#### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

GREAT BOWERY, d/b/a TRUNK ARCHIVE,

Plaintiff,

v.

BEST LITTLE SITES, d/b/a www.comicbookmovie.com; NATHAN BEST; MARK CASSIDY; JOSHUA WILDING; and DOES 1 through 10, inclusive,

Defendants.

Case No. 2:21-cv-00567-DBB

APPENDIX OF EVIDENCE

Pursuant to DUCivR 56-1(b)(5), Plaintiff Great Bowery Inc. d/b/a Trunk Archive, by counsel, designates the following exhibits which are attached hereto and incorporated by reference for the purposes of its Memorandum of Law in Support of its Motion for Summary Judgment:

///

///

///

Exhibit Tab	Description of Document
1	Holdo Photograph
2	DJ Photograph
3	Skywalker Photograph
4	Connix Photograph
5	Millennium Falcon Photograph
6	R2-D2 Photograph
7	Finn Photograph
8	Hux Photograph
9	Production Photographs
10	Lightsaber Photograph
11	Dameron Photograph
12	Copyright Registration Certificate VA 2-111-252
13	Copyright Registration Certificate VA 2-192-380
14	Artist Agreement dated November 12, 2014
15	Article appearing in Vanity Fair dated May 24, 2017, and titled "See Annie Leibovitz's Exclusive Cast Portraits of <i>Star Wars: The Last Jedi</i> for <i>Vanity Fair.</i> "
16	Article appearing in Vanity Fair dated May 22, 2019, and titled "Star Wars: The Rise of Skywalker Photos: Meet the Characters and Go on Set."
17	User profile of Defendant Mark Cassidy on the website <a href="https://www.comicbookmovie.com">www.comicbookmovie.com</a>

18	User profile of Defendant Joshua Wilding on the website www.comicbookmovie.com
19	Independent Contractor Agreement between Best Little Sites, LLC and Mark Cassidy dated June 30, 2014
20	Independent Contractor Agreement between Best Little Sites, LLC and Joshua Wilding dated June 30, 2014
21	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated October 18, 2017, and titled "STAR WARS: THE LAST JEDI Actress Laura Dern Shares New Image Of Vice Admiral Amilyn Holdo"
22	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated November 20, 2017, and titled "STAR WARS: THE LAST JEDI International TV Spot Features Benicio Del Toro As The Mysterious DJ"
23	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated December 27, 2017 and titled "STAR WARS: THE LAST JED's Mark Hamill Shares A Lovely Tribute To Carrie Fisher One Year After Her Passing"
24	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated December 27, 2018, and titled "Billie Lourd Shares A Touching Tribute To Carrie Fisher On The Second Anniversary Of Her Passing"
25	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated May 22, 2019, and titled "STAR WARS: THE RISE OF SKYWALKER – 12 Biggest Reveals And Spoilers From Vanity Fair's Cover Story"
26	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated May 22, 2019, and titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews"
27	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated June 25, 2019, and titled "STAR WARS: THE RISE OF SKYWALKER Has A Very Interesting Alternate Title In Japan"
28	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated June 26, 2019, and titled "STAR WARS: THE RISE OF SKYWALKER Star Daisy Ridley Promises A 'Brilliant End' To The Story"

29	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated August 12, 2019, and titled "STAR WARS: THE RISE OF SKYWALKER's Runtime Possible [sic] Revealed Along With Some Potential SPOILERS"
30	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated September 27, 2019, and titled "STAR WARS: THE RISE OF SKYWALKER – Rey And Kylo Ren Clash On New Empire Magazine Covers"
31	Article appearing on <a href="https://www.comicbookmovie.com">www.comicbookmovie.com</a> dated October 10, 2019, and titled "STAR WARS: THE RISE OF SKYWALKER Final Trailer Reportedly Scheduled For October 21"
32	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated December 26, 2019, and titled "STAR WARS: THE RISE OF SKYWALKER's Oscar Issaes Blames 'Disney Overlords' For No Poe/Finn Romance"
33	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated January 5, 2020, and titled "STAR WARS: THE RISE OF SKYWALKER Remains #1 At The Box Office As It Passes \$900M Worldwide"
34	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated January 7, 2020, and titled "Luke Skywalker's Big STAR WARS: THE RISE OF SKYWALKER Scene Was The Result Of Reshoots"
35	Article appearing on <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> dated January 26, 2020, and titled "STAR WARS: THE RISE OF SKYWALKER Passes \$500 Million At The Domestic Box Office"
36	Spreadsheet of revenues derived from the Infringing Articles
37	Defendant Best Little Sites, LLC's responses to Interrogatories dated October 21, 2022
38	Defendant Nathan Best's responses to Interrogatories dated October 21, 2022
39	Defendant Nathan Best's responses to Requests for Admission dated October 21, 2022
40	Defendant Mark Cassidy's responses to Requests for Admission dated October 21, 2022

41	Defendant Joshua Wilding's responses to Requests for Admission dated October 21, 2022
42	Declaration of Annie Leibovitz dated October 31, 2023
43	Complaint dated September 27, 2021
44	Answer and Counterclaim filed by Defendants Nathan Best and Best Little Sites, LLC, dated June 23, 2022
45	Answer filed by Defendant Joshua Wilding dated July 15, 2022
46	Answer filed by Defendant Mark Cassidy dated July 15, 2022

Dated: November 3, 2023 Respectfully submitted,

/s/ Mathew K. Higbee
Mathew K. Higbee, SBN 11133
HIGBEE & ASSOCIATES
(714) 617-8373
mhigbee@higbee.law

/s/ Ryan E. Carreon
Ryan E. Carreon, pro hac vice
HIGBEE & ASSOCIATES
(714) 617-8373
rcarreon@higbee.law
Attorneys for Plaintiff Trunk Archive







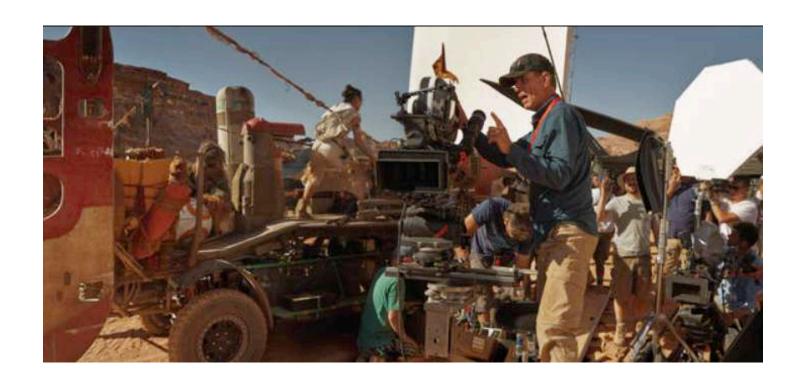






























#### Case 2:21-cv-00567-DBB-JCB Document 102-1 Filed 11/03/23 PageID.1997 Page 36 of Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Registration Number

VA 2-111-252

**Effective Date of Registration:** July 10, 2017

Acting United States Register of Copyrights and Director

**Title** 

**Title of Work:** Vanity Fair, 2017 (Part 1)

Previous or Alternate Title: Group Registration of published photographs: 45 photographs; publication dates

range: 2/01/2017 - 8/01/2017

Content Title: Emma Stone, Lupita Nyong'o, Amy Adams, Natalie Portman, Ruth Negga,

Dakota Fanning, Elle Fanning, Aja Naomi King, Dakota Johnson, Greta Gerwig

and Janelle Monae, Los Angeles, 2016 (approx. February 1, 2017)

Emma Stone, Los Angeles, 2016 (approx. February 1, 2017)

Natalie Portman, New York City, 2016 (approx. February 1, 2017)

Janelle Monae, Los Angeles, 2016 (approx. February 1, 2017)

Dakota Johnson, Los Angeles, 2016 (approx. February 1, 2017)

Elle Fanning, Los Angeles, 2016 (approx. February 1, 2017)

Dakota Fanning, Los Angeles, 2016 (approx. February 1, 2017)

Ruth Negga, Los Angeles, 2016 (approx. February 1, 2017)

Aja Naomi King, Los Angeles, 2016 (approx. February 1, 2017)

Greta Gerwig, Los Angeles, 2016 (approx. February 1, 2017)

Greta Gerwig, Los Angeles, 2016 (approx. February 1, 2017)

Lupita Nyong'o, Los Angeles, 2016 (approx. February 1, 2017)

Amy Adams, Los Angeles, 2016 (approx. February 1, 2017)

John Leguizamo, New York City, 2016 (approx. February 1, 2017)

New Establishment Summit, San Francisco, 2016 (approx. March 1, 2017)

Fran Lebowitz, Barry Diller, Graydon Carter, Sarah Jessica Parker, Conan O'Brien, Kevin Reilly, Eddy Cue, Richard Plepler, Amy Cappellazzo, Larry Gagosian, Jeff Koons, Laura Paulson, Darren Walker and Priscilla Chan, San Francisco, 2016 (approx. March 1, 2017)

Susan Wojcicki, Sean Parker, James Allison, James Balog, Lynsey Addario, Chamath Palihapitiya, Hamdi Ulukaya, Travis Kalanick, Jeff Bezos, Priscilla Chan, Marty Baron, Larry Gagosian, Jeff Koons, Kyle Bass, Sally Jewell, David Zaslav, and James Chanos, San Francisco, 2016 (approx. March 1, 2017)

Kevin Feige, John Lasseter, Kathleen Kennedy and Bob Iger, San Francisco, 2016 (approx. March 1, 2017)

Michael Moritz, Mary Parent, Steve Case, Beth Comstock, Bobby Kotick, Glenn Hubbard, Sebastian Thrun, Arati Prabhakar, Sarah Ellison, Nathan Myhrvold, Michael Evans, Peter Chernin, Marcus Samuelsson, Jesse Draper, Elizabeth Gore, Frank Rich, Fran Lebowitz, Mary Meeker, Jean Liu, Aaron Levie, Rashida Jones, Leslie Moonves, and Gabriel Sherman, San Francisco, 2016 (approx. March 1, 2017)

Renée Fleming, New York City, 2017 (approx. March 1, 2017)

BB-8, Oscar Isaac, John Boyega and Kelly Marie Tran, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Daisy Ridley and Mark Hamill, Dingle, Ireland, 2016 (approx. June 1, 2017)

Gwendoline Christie, Adam Driver and Domhnall Gleeson, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Carrie Fisher, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Daisy Ridley and Mark Hamill, Dingle, Ireland, 2016 (approx. June 1, 2017)

Carrie Fisher, BB-8, Oscar Isaac, John Boyega and Kelly Marie Tran, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Domhnall Gleeson, Adam Driver and Gwendoline Christie, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Daisy Ridley, Dingle, Ireland, 2016 (approx. June 1, 2017)

Daisy Ridley and Chewbacca, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Neal Scanlan and guests at the Canto Bight casino, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Michael Kaplan and his costume creations, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Laura Dern, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Benicio Del Toro, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Carrie Fisher, Rian Johnson, Mark Hamill and Kathleen Kennedy, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Anthony Daniels, Brian Herring, Dave Chapman, Matthew Denton, BB-8, Lee Towersey, R2-D2 and Joshua Lee, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Adam Driver, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Billie Lourd and Carrie Fisher, Pinewood Studios, London, 2016 (approx. June



1,2017)

Mark Hamill and Carrie Fisher, Pinewood Studios, London, 2016 (approx. June 1, 2017)

Serena Williams, Highland Beach, Florida, 2017 (approx. August 1, 2017)

Serena Williams, Highland Beach, Florida, 2017 (approx. August 1, 2017)

Serena Williams, Highland Beach, Florida, 2017 (approx. August 1, 2017)

Alexis Ohanian and Serena Williams, Highland Beach, Florida, 2017 (approx. August 1, 2017)

Serena Williams and Alexis Ohanian, Highland Beach, Florida, 2017 (approx. August 1, 2017)

Serena Williams and Alexis Ohanian, Highland Beach, Florida, 2017 (approx. August 1, 2017)

Jerry Brown, Sacramento, California, 2014 (approx. August 1, 2017)

### **Completion/Publication**

Year of Completion: 2017

Date of 1st Publication: February 01, 2017
Nation of 1st Publication: United States
International Standard Number: ISSN 0733-8899

### **Author**

• Author: Annie Leibovitz
Author Created: photograph

Work made for hire: No

Citizen of: United States

Year Born: 1949

### **Copyright Claimant**

Copyright Claimant: Annie Leibovitz

405 W 14th Street, 3rd Floor, New York, NY, 10014, United States

### Certification

Name: Laura Cali Date: July 06, 2017

Copyright Office notes: Basis for Registration: Registered as a Group of Published Photographs.



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Vanity Fair, 2019.

Type of Work: Visual Material

**Registration Number / Date:** VA0002192380 / 2020-01-16

**Application Title:** Vanity Fair, 2019

**Title:** Vanity Fair, 2019. [Group registration of published photographs. 44 photographs.

2019-03-01 to 2019-12-01]

**Description:** 44 photographs : Electronic file (eService)

Copyright Claimant: Annie Leibovitz, 1949- . Address: 15 Hudson Yards, 76E, New York, NY, 10001,

United States.

**Date of Creation: 2019** 

**Publication Date Range: 2019-03-01 to 2019-12-01** 

**Nation of First Publication:** United States

**Authorship on Application:** Annie Leibovitz, 1949-; Citizenship: United States. Authorship: photographs.

**Rights and Permissions:** Trunk Archive, (212) 356-0099

**Copyright Note:** Regarding title information: Deposit contains complete list of titles that correspond

to the individual photographs included in this group.

Regarding group registration: A group of published photographs may be registered on one application with one filing fee only under limited circumstances. ALL of the following are required: 1. All photographs (a) were created by the same author AND (b) are owned by the same copyright claimant AND (c) were published in the same calendar year AND 2. The group contains 750 photographs or less AND 3. A sequentially numbered list of photographs containing the title, file name and month of publication for each photograph included in the group must be uploaded along with other required application materials. The list must be submitted in an approved document format such as .XLS or .PDF. The file name for the numbered list must contain the title of the group and the Case Number assigned to the application.

**Photographs:** Published in December 2019 (4 photographs): RuPaul, Culver City, California, 2019,

RuPaul, Culver City, California, 2019, RuPaul, Culver City, California, 2019,

RuPaul, Culver City, California, 2019,

Published in December 2019 (11 photographs): Nancy Pelosi, Washington, D.C.,

2019, Nancy Pelosi, Washington, D.C., 2019, Steny Hoyer, Ilhan Omar, and Nancy Pelosi, Washington, D.C., 2019, Nancy Pelosi, Washington, D.C., 2019, Chuck Schumer, Washington, D.C., 2019, Nancy Pelosi, Washington, D.C., 2019, Members at a caucus meeting, Washington, D.C., 2019, Nancy Pelosi, Washington, D.C., 2019, Maxine Waters and Nancy Pelosi, Washington, D.C., 2019, Adam Schiff, Elijah Cummings, Jerry Nadler, and Nancy Pelosi, Washington, D.C., 2019, Nancy Pelosi, Washington, D.C., 2019,

Published in March 2019 (1 photographs): Cicely Tyson, New York City, 2018 Published in April 2019 (8 photographs): Beto O'Rourke, El Paso, Texas, 2019, Beto O'Rourke, El Paso, Texas, 2019, Beto and Henry O'Rourke, El Paso, Texas, 2019, Beto O'Rourke, outside El Paso, Texas, 2019, Molly, Henry, and Beto O'Rourke, El Paso, Texas, 2019, Beto O'Rourke, El Paso, Texas, 2019, Beto O'Rourke, Bowie High School, El Paso, Texas, 2019, Beto and Amy O'Rourke with their children, Molly, Ulysses and Henry, Franklin Mountains State Park, El Paso, Texas, 2019 Published in June 2019 (17 photographs): Adam Driver, London, 2018, Daisy Ridley, London, 2019, J. J. Abrams, Wadi Rum, Jordan, 2018, J. J. Abrams, Wadi Rum, Jordan, 2018, Colin Anderson, Wadi Rum, Jordan, 2018, J. J. Abrams and Daisy Ridley, Wadi Rum, Jordan, 2018, Joonas Suotamo, Daisey Ridley, Anthony Daniels, and John Boyega, Wadi Rum, Jordan, 2018, BB-8 and Anthony Daniels, Wadi Rum, Jordan, 2018, Colin Anderson, Joonas Suotamo, BB-8, and Daisy Ridley, Wadi Rum, Jordan, 2018, Aki-Aki, Wadi Rum, Jordan, 2018, Adam Driver and Daisy Ridley, London, 2018, John Boyega and Naomi Ackie, London, 2019, Oscar Isaac, Billy Dee Williams, Chewbacca, D-O, and BB-8, London, 2018, Domnhall Gleeson and Richard E. Grant, London, 2018, Keri Russell, London, 2018, John Williams, Culver City, California, 2019, Mark Hamill and R2-D2, London, 2018,

Published in September 2019 (3 photographs): Ta-Nehisi Coates, New York City, 2019, Ta-Nehisi Coates, Brooklyn, New York, 2019, Ta-Nehisi Coates, New York City, 2019,

Names: Leibovitz, Annie, 1949-



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### **ARTIST AGREEMENT**

This Artist Agreement (the "Agreement") is made as of November 12, 2014 by and between Trunk Images, Inc. d/b/a Trunk Archive ("Trunk Archive") and Annie Leibovitz ("Artist"). This Agreement shall confirm the terms upon which Trunk Archive will be the worldwide representative for licensing certain copyrighted images in and/or to which Artist holds the copyright or reproduction rights.

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IN WITNESS WHEREOF, the parties he first set forth above.	ereto have executed this Agreement as of the date
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THE LAST JEDI | SUMMER 2017

## See Annie Leibovitz's Exclusive Cast Portraits of *Star Wars: The Last Jedi* for *Vanity Fair*

When last seen, in the clifftop payoff of *The Force Awakens*, Daisy Ridley's Rey was face-to-face with Mark Hamill's long-lost Luke Skywalker. What happens next, when *The Last Jedi* hits screens in December, is closely guarded. But we've got the definitive first look at characters old and new right here. For more, read David Kamp's article in the Summer 2017 issue.

PHOTOGRAPHY BY ANNIE LEIBOVITZ
MAY 24, 2017



PHOTOGRAPHED EXCLUSIVELY FOR V.F. BY ANNIE LEIBOVITZ. FOR THE LAST JEDI: COSTUME DESIGN BY MICHAEL KAPLAN, PRODUCTION DESIGN BY RICK HEINRICHS. FOR V.F.; SET DESIGN BY MARY HOWARD. FOR DETAILS, GO TO VC.COM/CREDIA.

1/14

### Master Class

 $\label{eq:decomposition} \textit{Daisy Ridley as Resistance warrior Rey and Mark Hamill as mentor Luke Skywalker, on location in Ireland.}$ 



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2/14

#### New Hope

Daisy Ridley's Rey hones her lightsaber skills—and channels her inner Force.



3/14

### Driver's Seat

Daisy Ridley as Rey, at the helm of the Millennium Falcon, with Joonas Suotamo as co-pilot Chewbacca.







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Golden Globe Winners 2020: See the Full List Here BY KATEY RICH



All of the Looks From the Golden Globes 2020 Red Carpet



Who Would Defend Harvey Weinstein?

BY MAUREEN O'CONNOR



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PHOTOGRAPH BY ANNIE LEIBOVITZ.

4/14

### Freedom Fighters

Carrie Fisher, Oscar Isaac, John Boyega, and Kelly Marie Tran as the rebels General Leia Organa, Poe Dameron, Finn, and Rose Tico, with droid BB-8.



PHOTOGRAPH BY ANNIE LEIBOVITZ

5/14

### Night Creatures

Neal Scanlan (seated), creative supervisor of the *Star Wars* creature shop, and guests at the Canto Bight casino.



PHOTOGRAPH BY ANNIE LEIBOVITZ

6/14

### Best-Dressed

 $Costume\ designer\ Michael\ Kaplan\ (seated),\ surrounded\ by\ some\ of\ his\ creations.$ 



PHOTOGRAPH BY ANNIE LEIBOVITZ



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All of the Looks From the Golden Globes 2020 Red Carpet



Who Would Defend Harvey Weinstein?
BY MAUREEN O'CONNOR

## 

Off Duty

Anthony Daniels as C-3PO, with droids R2-D2 and BB-8 and the Droid Department's Brian Herring, Dave Chapman, Matthew Denton, Lee Towersey, and Joshua Lee.





PHOTOGRAPH BY ANNIE LEIBOVITZ

8/14

### Off Duty

Carrie Fisher (General Leia Organa), writer-director Rian Johnson, Mark Hamill (Luke Skywalker), and producer Kathleen Kennedy with Fisher's dog, Gary, and Hamill's daughter's dog, Millie.



PHOTOGRAPH BY ANNIE LEIBOVITZ



### MOST POPULAR



Golden Globe Winners 2020: See the Full List Here BY KATEY RICH



All of the Looks From the Golden Globes 2020 Red Carpet



Who Would Defend Harvey Weinstein?

BY MAUREEN O'CONNOR



PHOTOGRAPH BY ANNIE LEIBOVI

10/14

### Memories

Fisher and Hamill, with whom she first worked four decades ago.



PHOTOGRAPH BY ANNIE LEIBOVITZ.

Rookies

Laura Dern, as Vice Admiral Amilyn Holdo, a newcomer to the saga.







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12/14

Benicio Del Toro, as the shifty "DJ," a newcomer to the saga.



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3/14

### Spawn

Adam Driver, in character as Kvlo Ren. Han Solo's son and slaver, wields a crossauard liahtsaber.

## Case 2:21-cv-00567-DBB-JCB--Document-102-1 Filed 11/03/23 PageID.2013 Page 52 of 355



14/14

### The Dark Side

First Order leaders General Hux, Kylo Ren, and Captain Phasma, played by Domhnall Gleeson, Adam Driver, and Gwendoline Christie.

### TODAY'S TOP STORIES



**Harvey Weinstein Charged** With Rape, Sexual Battery in Los Angeles

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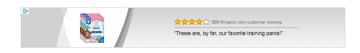
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## Star Wars: The Rise of Skywalker Photos: Meet the Characters and Go on Set

Get an exclusive, behind-the-scenes look at Star Wars: The Rise of Skywalker. Annie Leibovitz photographs the places and faces behind the film.

PHOTOGRAPHY BY ANNIE LEIBOVITZ



PHOTOGRAPH BY ANNIE LEIBOVITZ.

### **HOT TAKE**

Members of the crew shade and shine Daniels, the only cast member to appear in all nine of the Skywalker films, while BB-8 looks on.



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The Best Movies of 2023, So Far Y RICHARD LAWSON

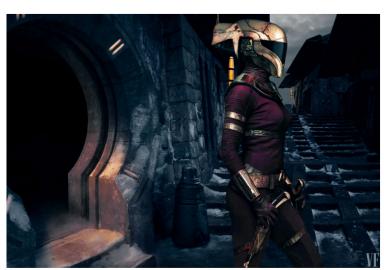
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J.J. Abrams, alongside Stunt Coordinator Eunice Huthart, directs the Knights of Ren; elite fearsome enforcers of Kylo Ren's dark will.

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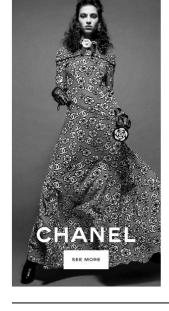
Vanity Fair reveals Keri Russell as the masked scoundrel Zorri Bliss, seen in the Thieves' Quarter of the snow-dusted world Kijimi.







Sara Ramirez Issues Scathing Response to Anti-Che Diaz Profile BY SAVANNAH WALSH



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The Best Movies of 2023, So Far BY RICHARD LAWSON



Nia DaCosta, Barrier-Breaking Director of *The Marvels*, on Navigating the Blockbuster... BY REBECCA FORD



PHOTOGRAPH BY ANNIE LEIBOVITZ.

### FORCE MAJEURE

First Order leaders General Hux (Domhnall Gleeson) and Allegiant General Pryde (Richard E. Grant) on the bridge of Kylo Ren's destroyer.



PHOTOGRAPH BI ANNIE LE

**DESERT POWER** 

Joonas Suotamo (Chewbacca), Ridley, Anthony Daniels (C-3PO), and John Boyega (Finn) await the call to action for a chase scene.





PHOTOGRAPH BY ANNIE LEIBOVITZ.

### SANDBLAST

Camera operator Colin Anderson readies a take for a chase sequence spotlighting the heroics of Chewbacca, BB-8, and Rey.





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The Best Movies of 2023, So Far BY RICHARD LAWSON



Nia DaCosta, Barrier-Breaking Director of *The Marvels*, on Navigating the Blockbuster... BY REBECCA FORD



## Case 2:21 - cv - 00567 - DBB - JCB Document 102-1 Filed 11/03/23 PageID.2019 Page 58 of

PUNCH IT!

In a historic reunion, Lando Calrissian (Billy Dee Williams) retakes the helm of the Millennium Falcon, joined by Poe Dameron (Oscar Isaac), Chewbacca, D-O, and BB-8. "He's a survivor," Williams says of Lando.



### HORSING AROUND

Finn and new ally Jannah (Naomi Ackie), atop hardy orbaks, lead the charge against the mechanized forces of the First Order. "It's extremely surreal to be in it," says Ackie, "and see how it works from the





PHOTOGRAPH BY ANNIE LEIBOVITZ

Camera operator Colin Anderson readies a take.





### MOST POPULAR



The Best Movies of 2023, So Far BY RICHARD LAWSON



Nia DaCosta, Barrier-Breaking Director of *The Marvels*, on Navigating the Blockbuster... BY REBECCA FORD





PHOTOGRAPH BY ANNIE I FIROVITZ

#### STAR CROSSED

Kylo Ren (Adam Driver) and Rey battle it out with lightsabers in a stormy confrontation. Their Force-connection—what Driver calls their "maybe-bond"—will turn out to run even deeper than previously revealed.

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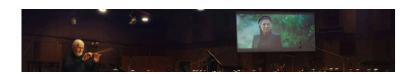


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PHOTOGRAPH BY ANNIE LEIBOVITZ.

Director and co-writer J. J. Abrams and crew weather the Jordanian sun to capture the action on planet Pasaana.





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The Best Movies of 2023, So Far by richard lawson



Nia DaCosta, Barrier-Breaking Director of *The Marvels*, on Navigating the Blockbuster...



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PHOTOGRAPH BY ANNIE LEIBOVITZ.

### **ENCORE**

Composer John Williams conducting the *Star Wars* score, drawing on themes and motifs he has woven across four decades. "I didn't think there would ever be a second film," he says.



PHOTOGRAPH BY ANNIE LEIBOVITZ.

### FROM THE ASHES

Mark Hamill, as Luke, with R2-D2. Speculation is rampant about who will "rise" as the Skywalker of the movie's title—and how that choice will reflect the way the world has changed since *Star Wars* debuted in 1977.

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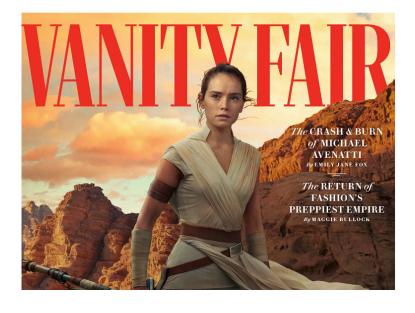
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### All of Meghan Markle's Looks From the Invictus Games

The duchess went through multiple daily outfit changes during her time in Düsseldorf, mixing luxury and affordable brands with aplomb. BY ERIN VANDERHOOF

### See Rihanna and A\$AP Rocky's Family Photos With Their Newborn Baby

Some babies were born to cause a Riot. BY KASE WICKMAN

### VMAs 2023 Red-Carpet Fashion: See Every Outfit & Look

See all the dazzling looks at MTV's 2023 Video Music Awards in Newark, New Jersey. BY KASE WICKMAN

### The Venice Film Festival's 35 Most Fashionable Entrances Ever

The festival is held on Venice's barrier island of Lido, providing ample opportunity for the chicest of photo calls: stars disembarking from a boat. BY KENZIE BRYANT



### See the Best-Dressed Celebrities at the VMAs 2023

On Tuesday evening, the fashion set traded the star-studded front rows of New York Fashion Week to strike a pose at the Prudential Center in Newark, New Jersey. Here's who did it best. BY MAGGIE COUGHLAN



### NYFW Kicks Off With a Tribute to Gabriela Hearst

At The Museum at the Fashion Institute of Technology's annual Couture Council Luncheon, the designer accepted the 2023 Artistry of Fashion Award for her advancements in sustainability. BY KAYLA HOLLIDAY





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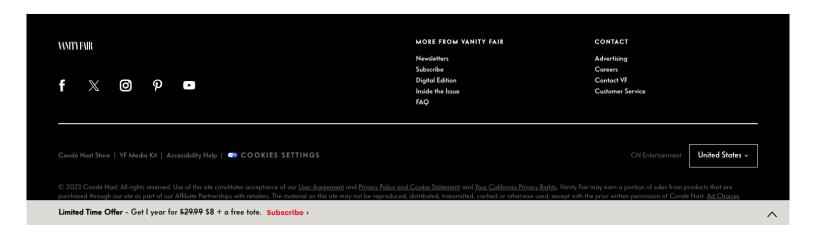
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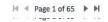
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### **AVENGERS: ENDGAME Directors Share Cryptic Marvel Tease** Ahead Of San Diego Comic-Con Panel

Avengers: Endgame directors Joe and Anthony Russo have stoked speculation with a cryptic tweet ahead of their Marvel Comic-Con panel next weekend. Could they be teasing a new MCU project? Take a look...



### Marvel's FALCON & WINTER SOLDIER Series Enlists JOHN **WICK Writer Derek Kolstad**

Reports are coming in that Marvel's upcoming Falcon and Winter Soldier Disney+ series has recruited John Wick scribe Derek Kolstad to work on the script alongside Malcolm Spellman (Empire). Check it out...

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### Has STRANGER THINGS Star Millie Bobby Brown Joined The Cast Of Marvel's ETERNALS After All?

A rumor recently did the rounds which claimed that Millie Bobby Brown (Stranger Things, Godzilla: King of the Monsters) was in line for a role in Marvel's Eternals, and now a trade may have confirmed it...

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### THE SUICIDE SQUAD Adds A WRINKLE IN TIME Actress Storm Reid As Idris Elba's Daughter

As James Gunn begins to round out the cast for his upcoming Suicide Squad sequel, the latest addition is Storm Reid (A Wrinkle in Time, Euphoria), who will play the daughter of Idris Elba's character.

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### STAR WARS: THE RISE OF SKYWALKER Unveils Our First Look At The Sith Trooper Ahead Of SDCC

The first official merchandise for Star Wars: The Rise of Skywalker has now been unveiled ahead of San Diego Comic-Con, and it focuses on a new breed of Imperial Stormtrooper known as the Sith Trooper...







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Ryan Meinerding discusses the process of designing Mysterio's outfit, giving

us a look at several alternate costumes - one of which is arguably even more comic-accurate that the one we saw in the movie.

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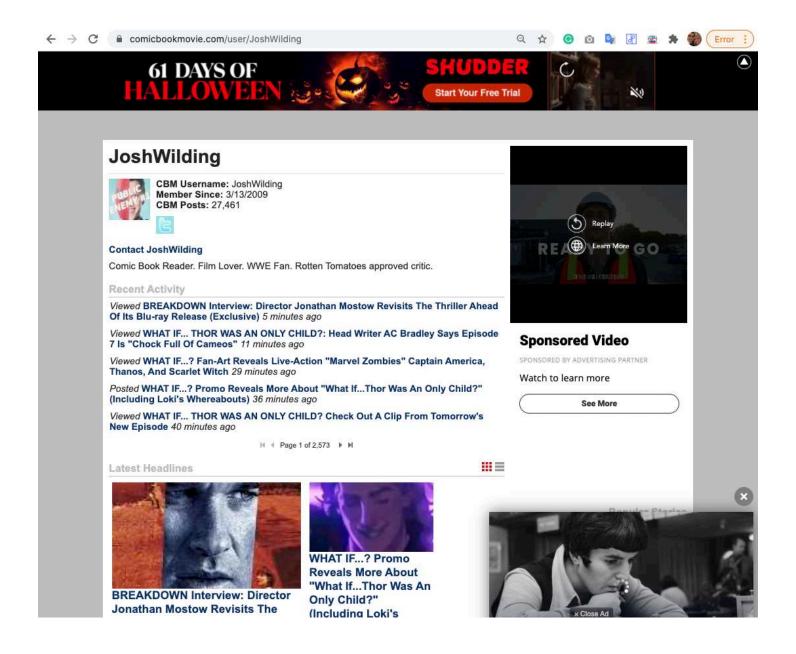
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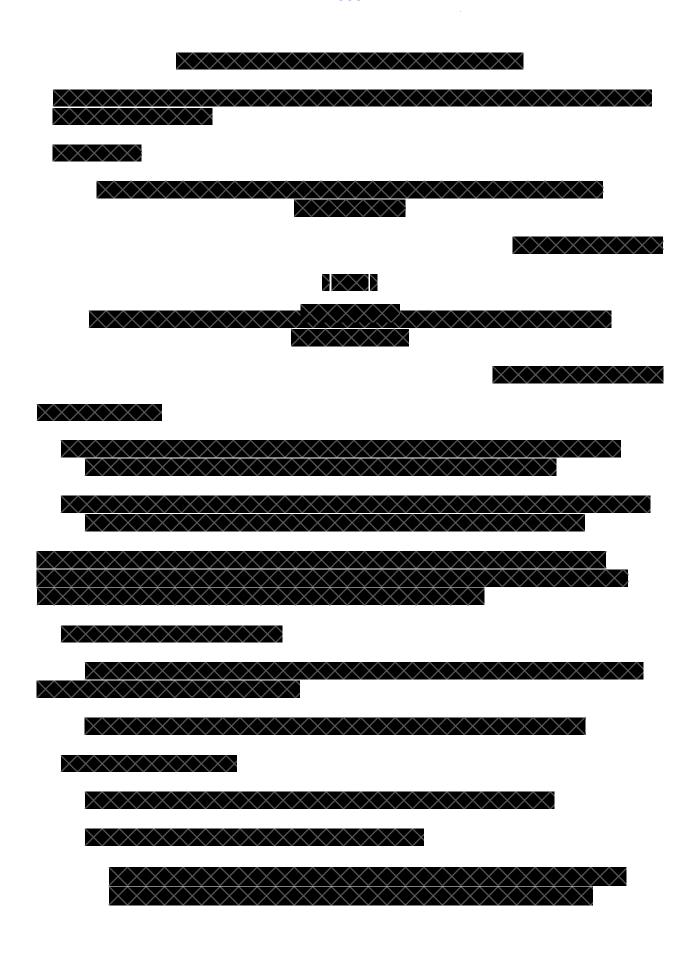
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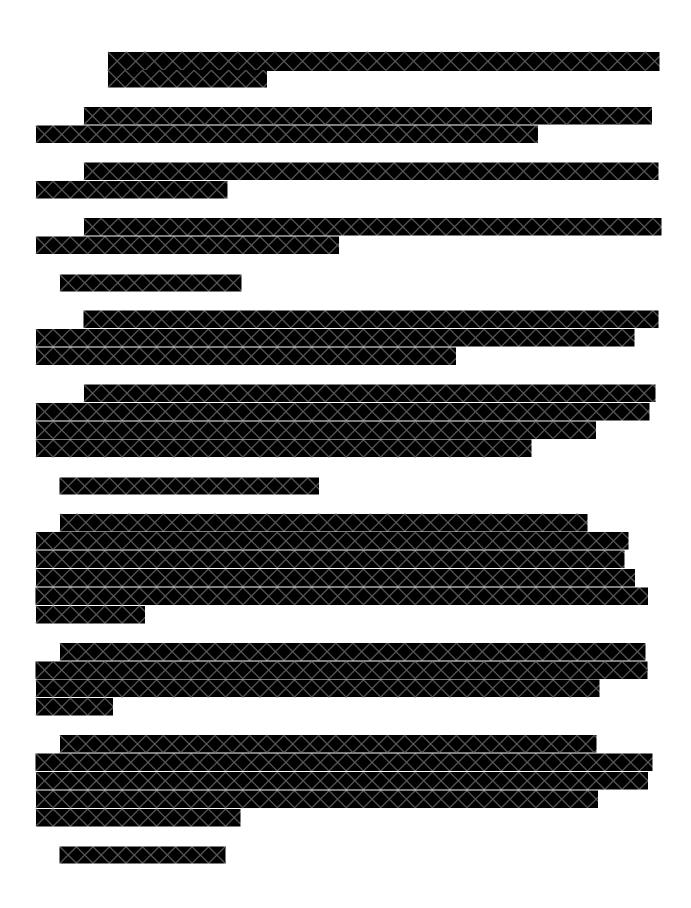
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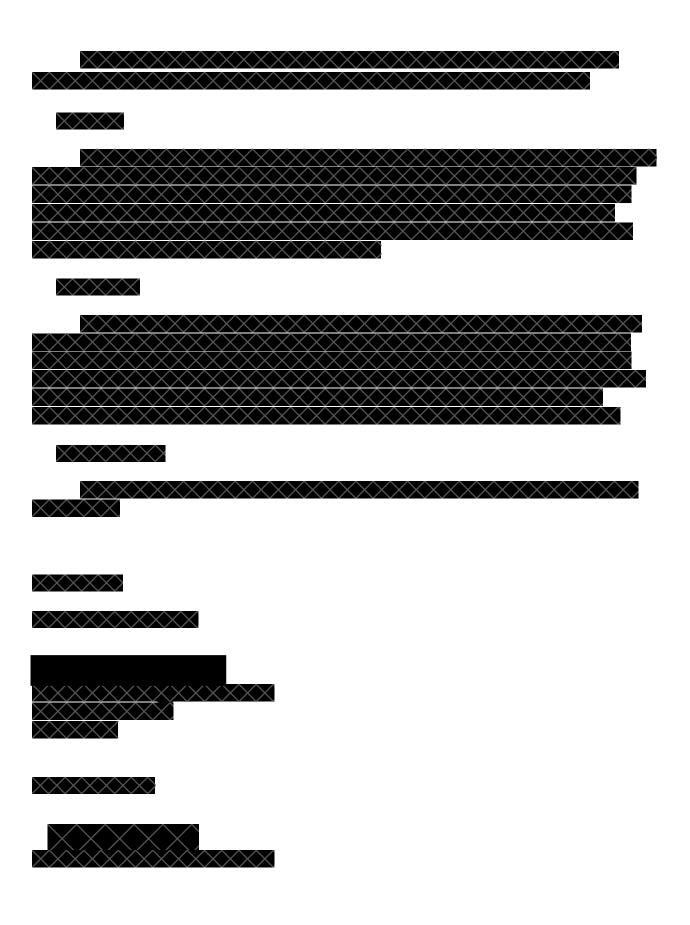




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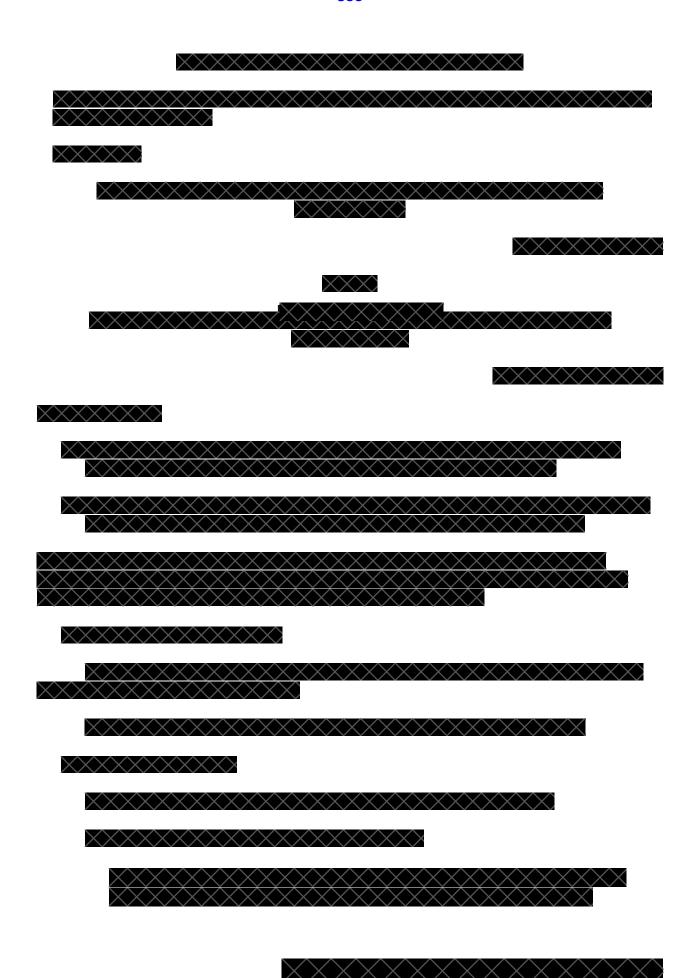


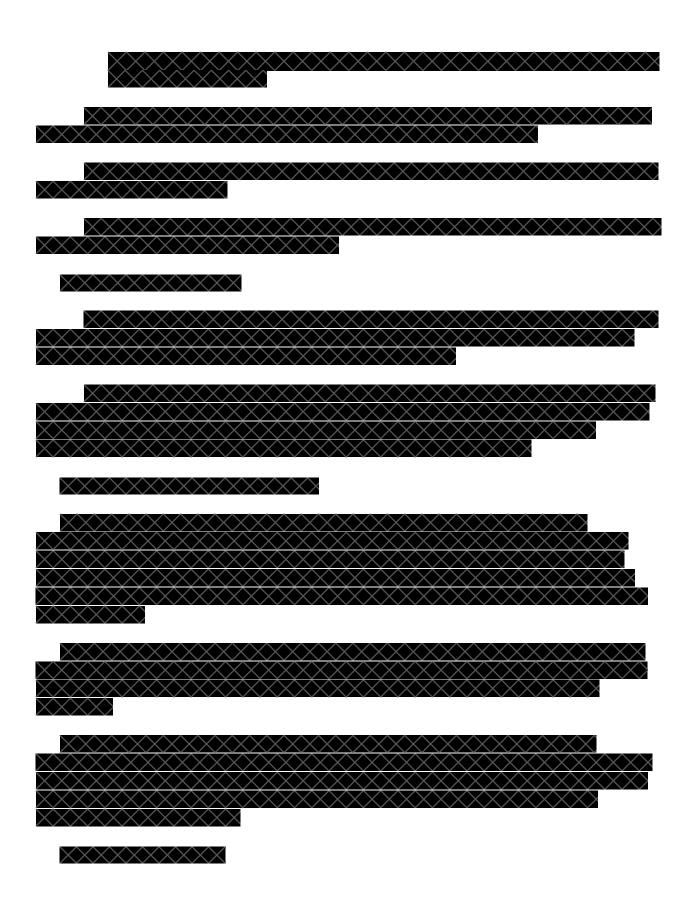




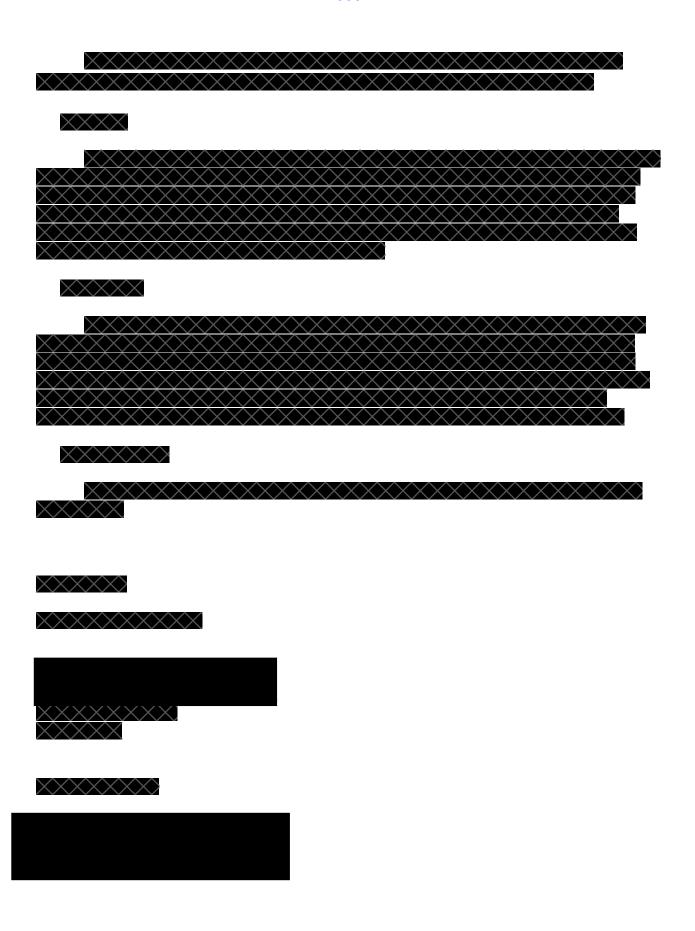






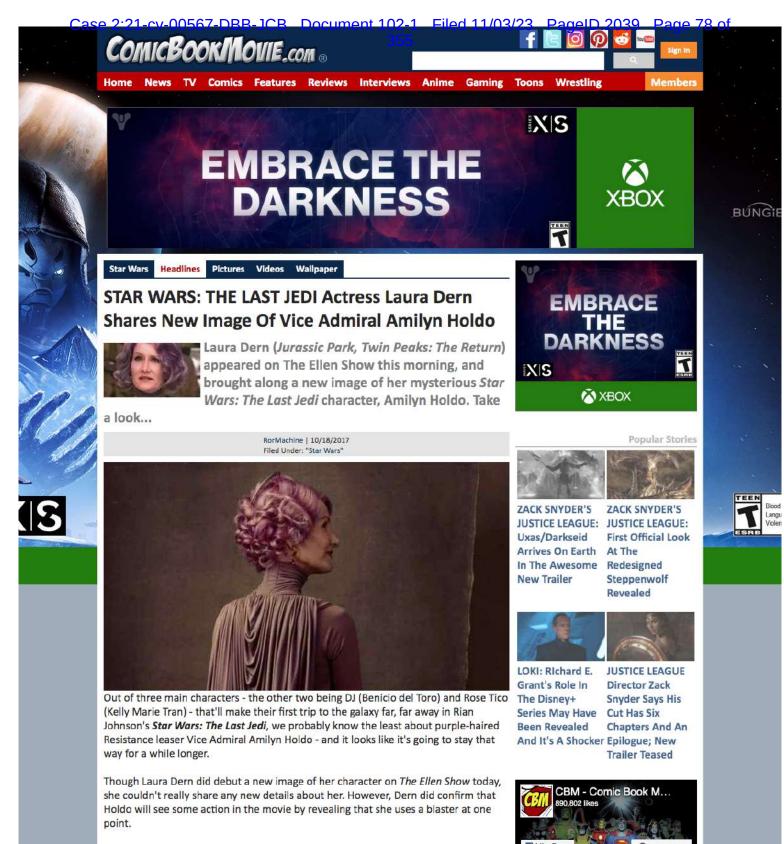












You can check out the video interview for yourselves below along with the new still.



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Star Wars Headlines Pictures Videos Wallpaper

## STAR WARS: THE LAST Jedi International TV Spot Features Benicio Del Toro As The Mysterious DJ



An international TV spot for Rian Johnson's Star Wars: The Last Jedi has found its way online, and this one features a new glimpse of a character we still know next to nothing about: Benicio Del

Toro's DJ.

RorMachine | 11/20/2017



We're starting to discover a little more about the characters that are going to be introduced in Star Wars: The Last Jedi, but one new recruit that's managed to fly under the radar is the enigmatic DJ.

Benicio Del Toro did recently describe his character as a "shady individual" who is neither a hero nor a villain, and this latest international TV spot appears to back that up as DJ is spotted in amongst the First Order.

Is he a prisoner, or does the "slicer" have dealings with the enemies of The Resistance? We'll find out when Star Wars: The Last Jedi hits theaters next month.

Mais um novo tv spot de STAR WARS #TheLastJedi pic.twitter.com/HGYNzIROZV

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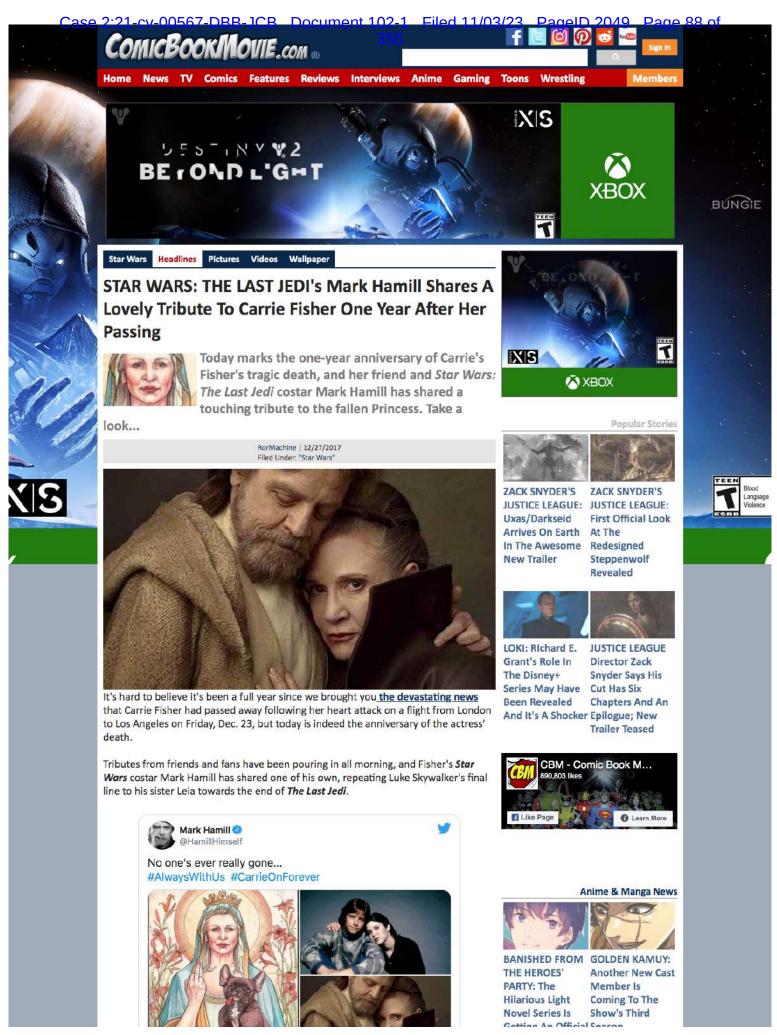












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It remains to be seen how the final installment in the new trilogy deals with Leia's absence, but whatever happens, The Last Jedi served as a fitting sendoff for Carrie Fisher and her iconic character.







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# **Billie Lourd Shares A Touching Tribute To Carrie** Fisher On The Second Anniversary Of Her Passing

Star Wars Headlines Pictures Videos Wallpaper



Two years ago to the day, Carrie Fisher passed away, leaving her legions of fans in mourning - a loss they're still feeling to this day. Now, her daughter has shared a heartfelt tribute via

Instagram...

RorMachine | 12/27/2018



Star Wars legend Carrie Fisher left us on this day two years ago, and fans across the globe have taken to social media to pay tribute to the late actress and raise a glass to

At midnight last night, Carrie's daughter Billie Lourd shared a touching tribute of her own via Instagram.

The Star Wars: The Last Jedi actress posted a video of herself singing one of her mother's favorite songs on the piano that was given to her by her father, Eddie Fisher.



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It was recently confirmed that Carrie Fisher will make a posthumous appearance in Episode IX, and while fans obviously shouldn't expect to see too much of the beloved former Princess in the film, it does sound like J.J. Abrams may have at least found a way to make her an important part of the plot and give us all a satisfactory conclusion to Leia - and Carrie's - story.



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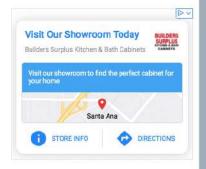
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There's a lot of great information here, including insider info from the magazine's visit to the set and comments from the cast and crew. It also sounds like Abrams is planning to take some risks.

That was evident from the big reveal in the teaser trailer, but to think that there are even more surprises in store for us really is crazy. So, to check out these fresh details, just click the "View List" button!

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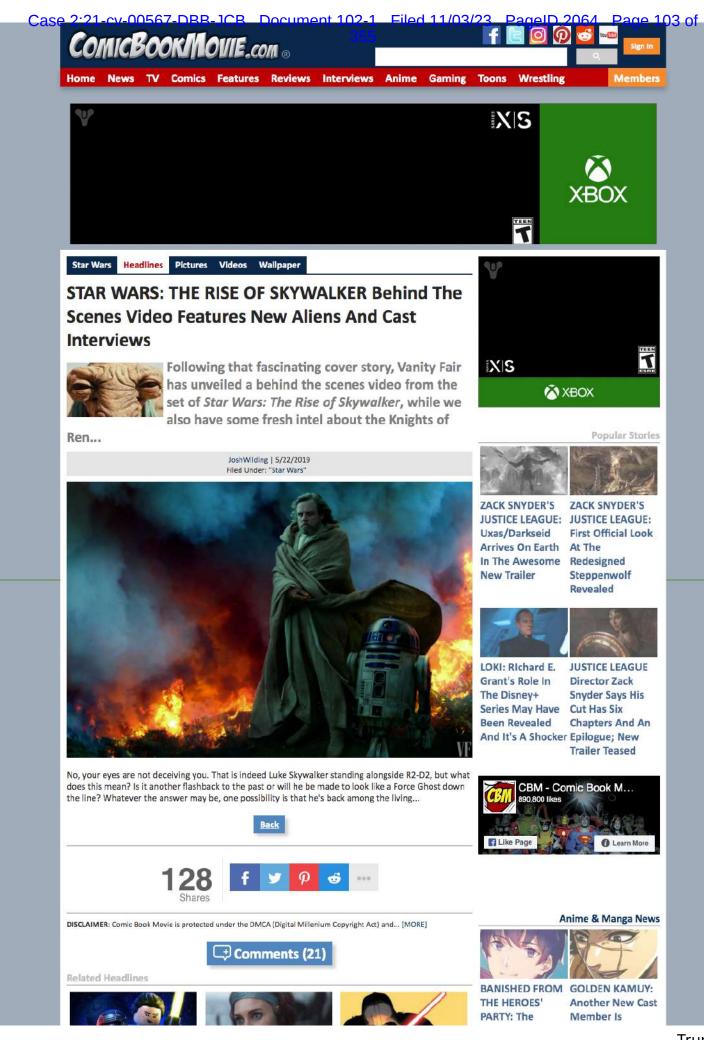




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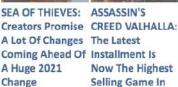


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Ren...

Following that fascinating cover story, Vanity Fair has unveiled a behind the scenes video from the set of Star Wars: The Rise of Skywalker, while we also have some fresh intel about the Knights of





Another shot of Rey in action. Look closely to the left and you'll notice that Chewbacca appears to be holding on to BB-8! What's particularly awesome about this is the fact that Abrams is clearly planning to once again utilize plenty of practical effects.











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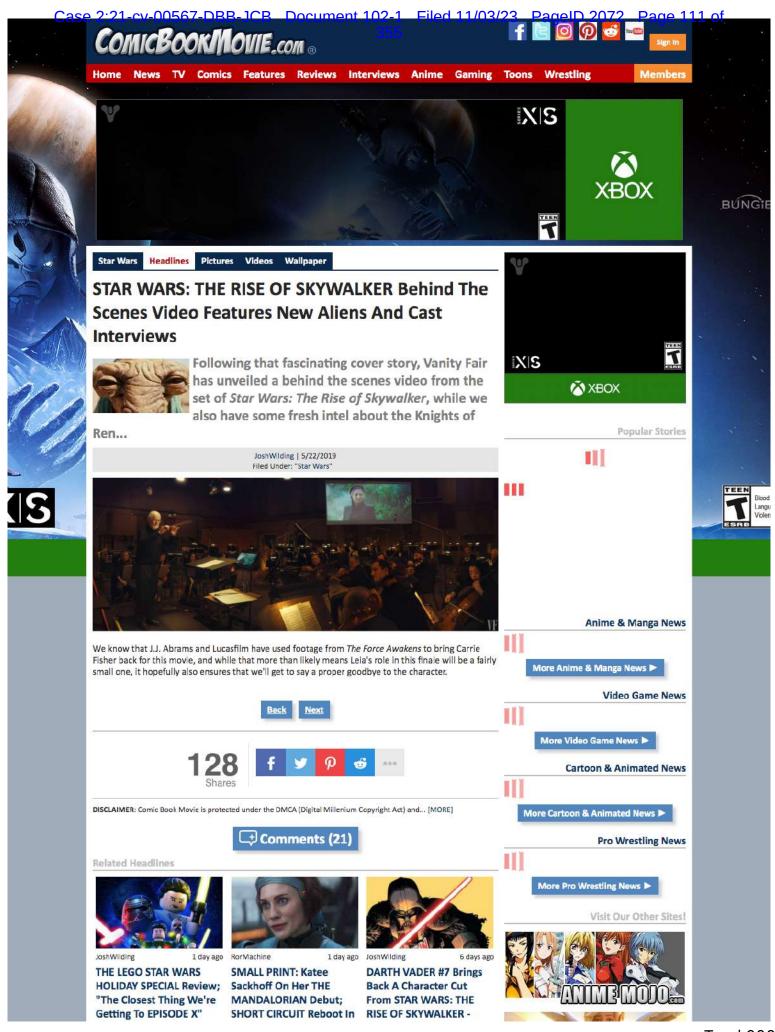




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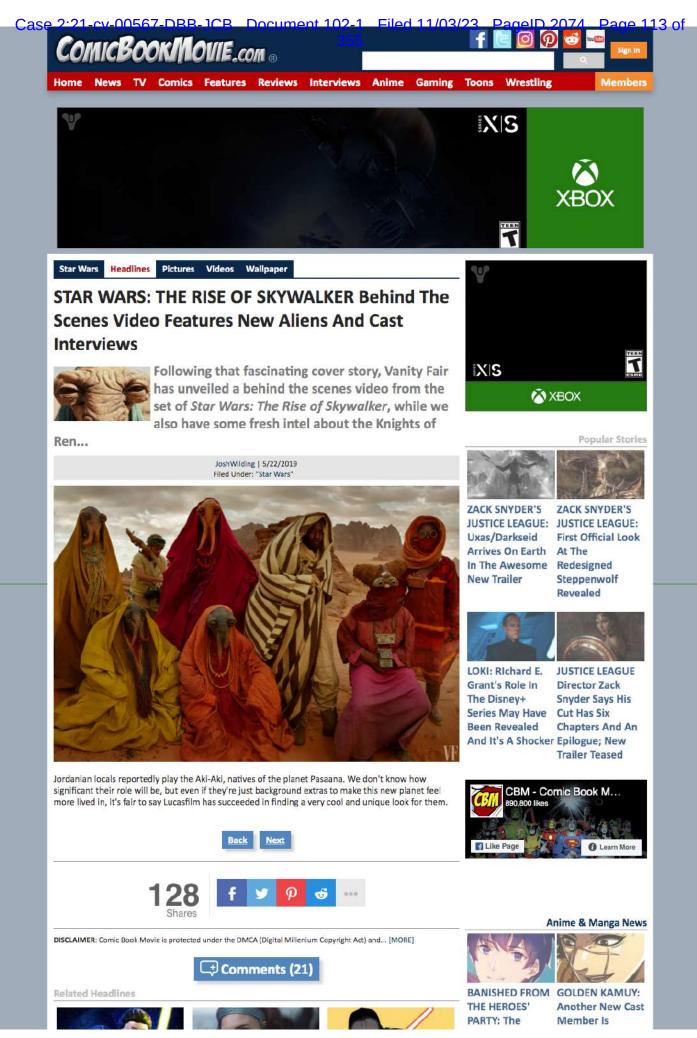
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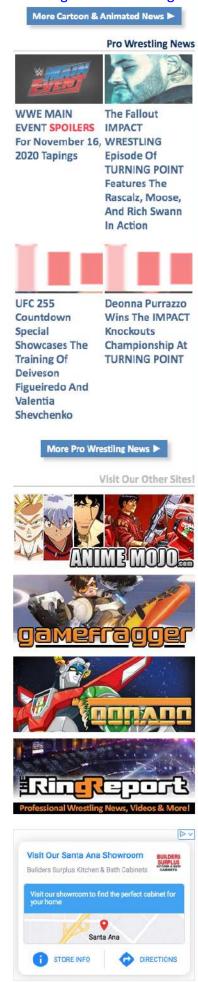


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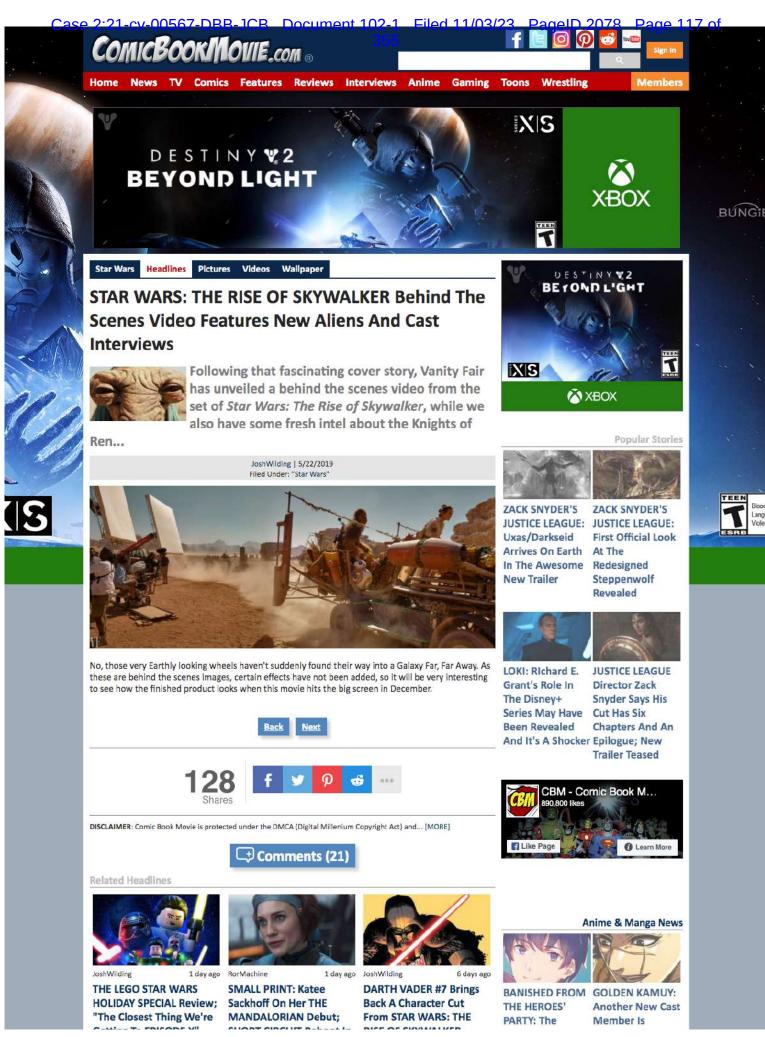


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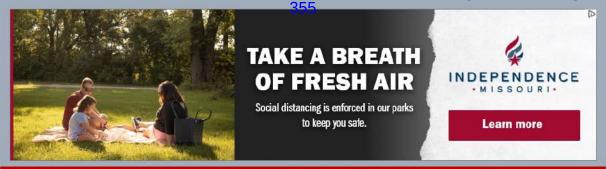




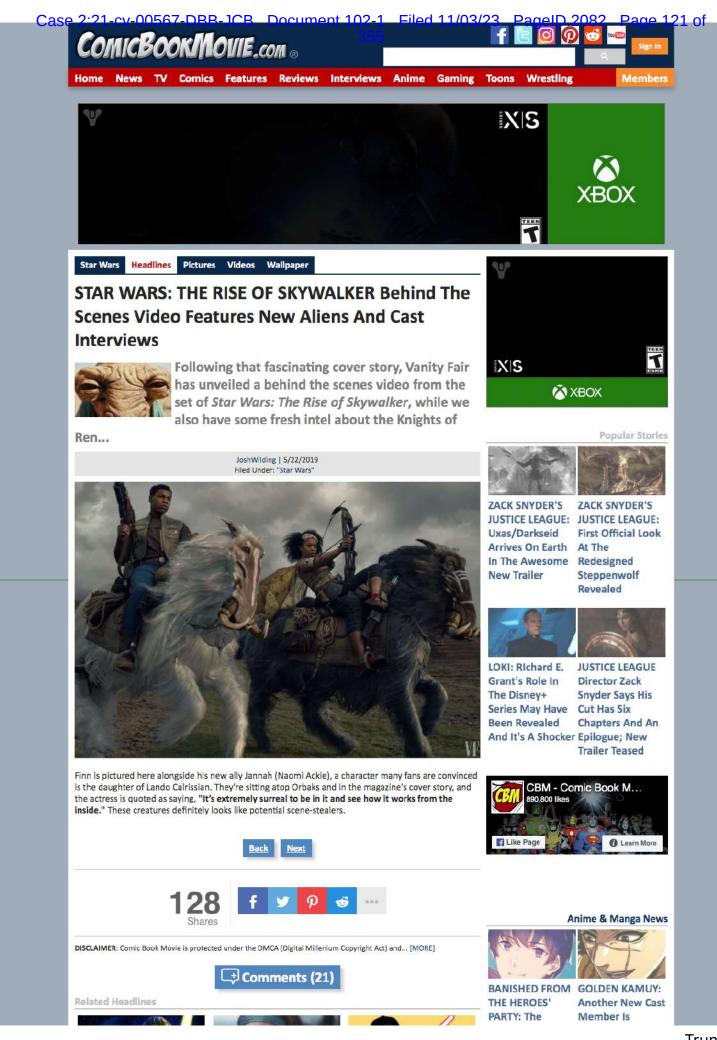








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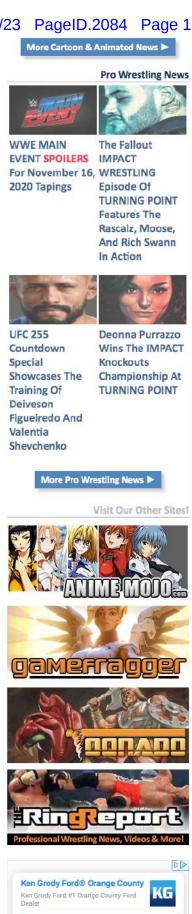


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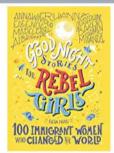


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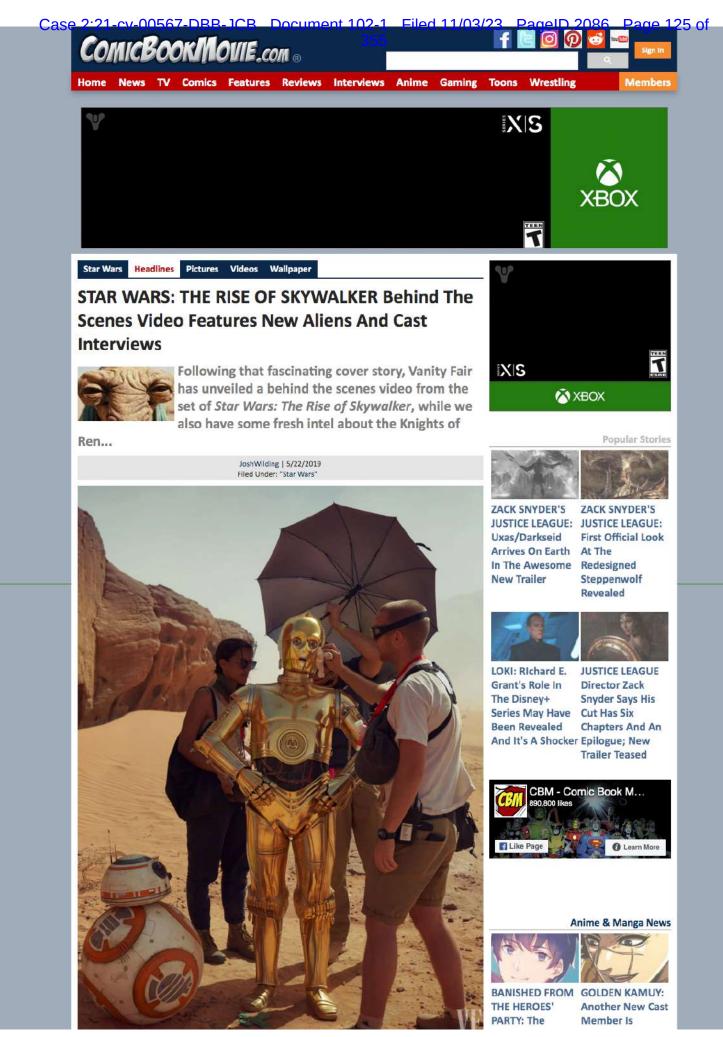


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Anthony Daniels is the only actor to have have appeared in all nine chapters of the Skywalker Saga, and he can be seen here once again forced to deal with the blistering heat while decked out in Threepio's iconic costume. To his left is BB-8, the fan-favourite droid introduced in The Force Awakens.







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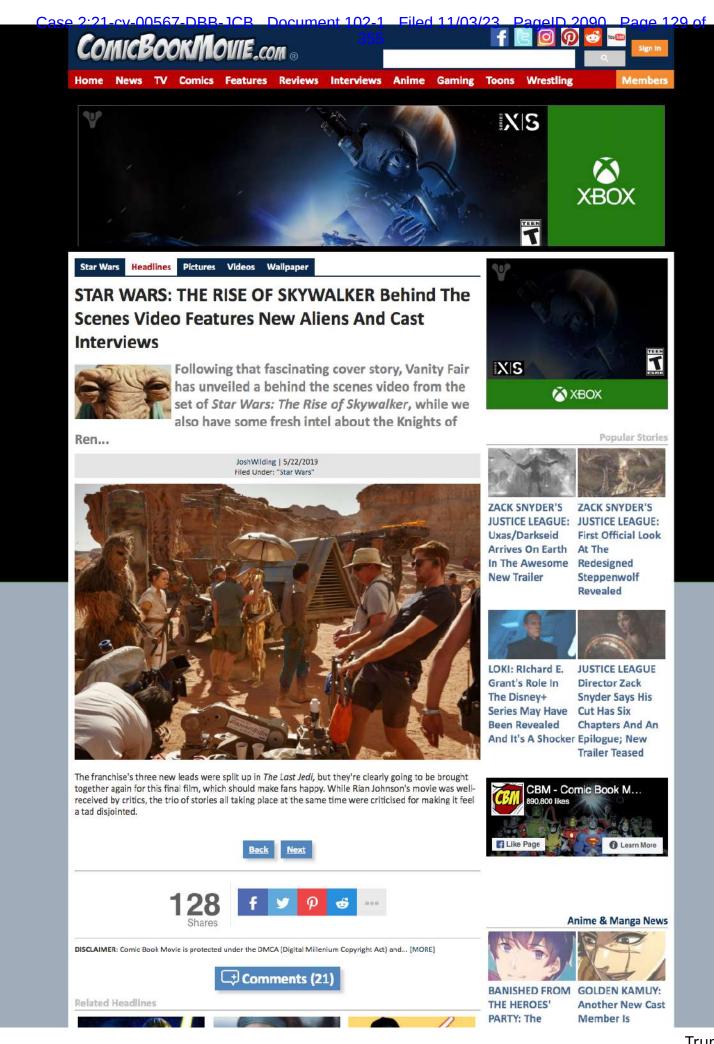


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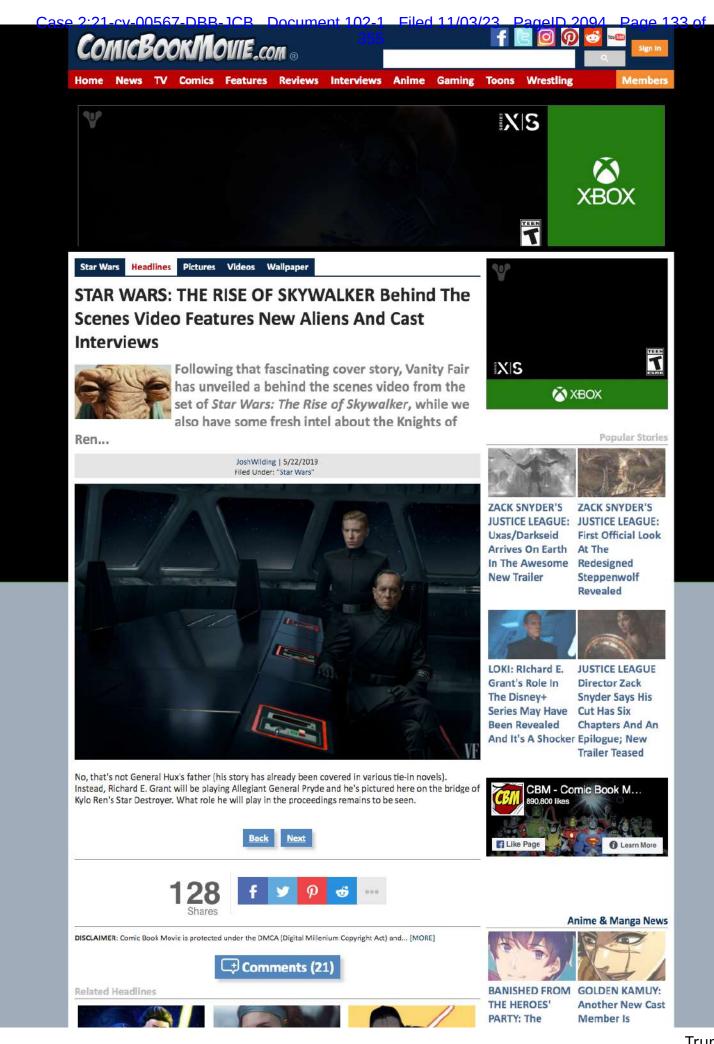












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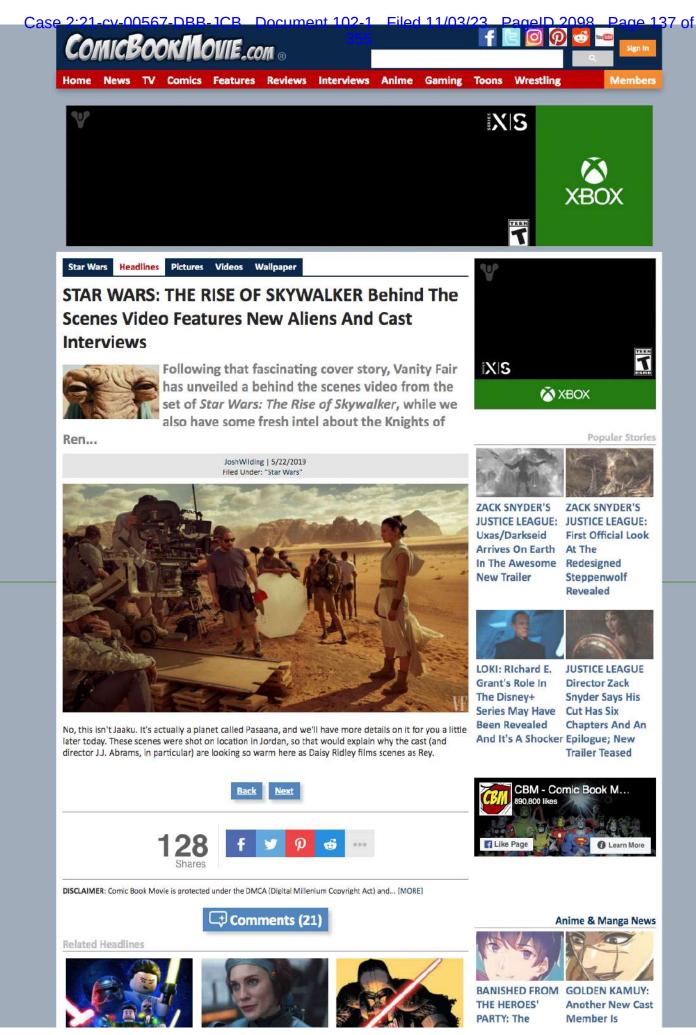


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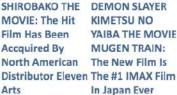
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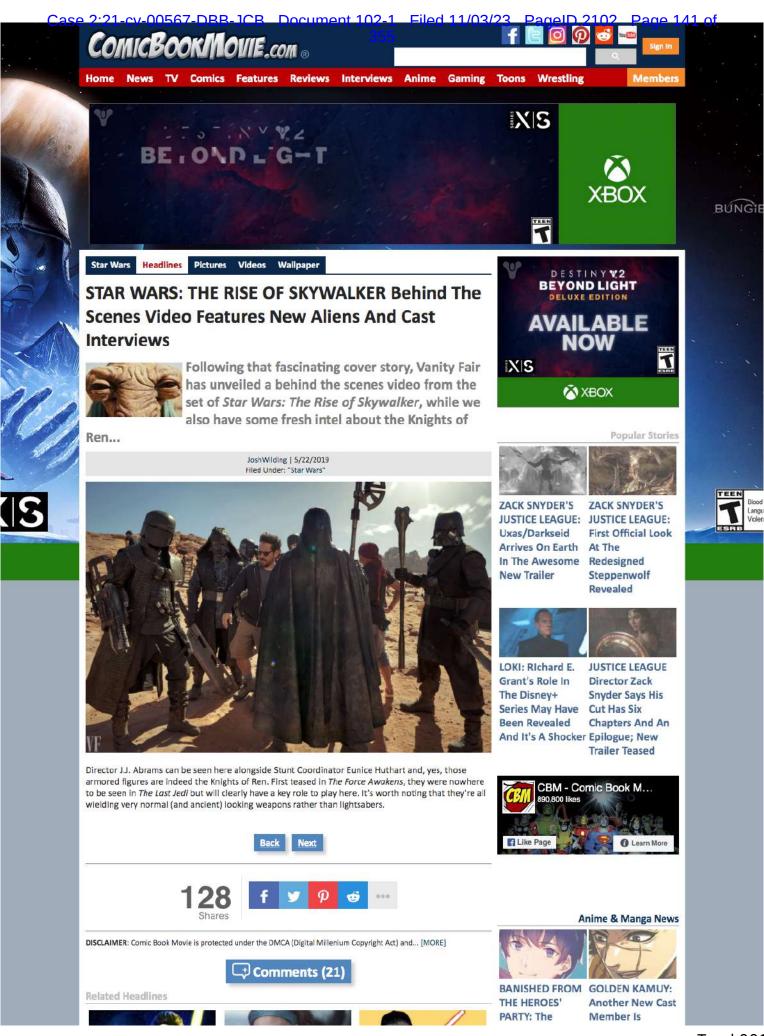


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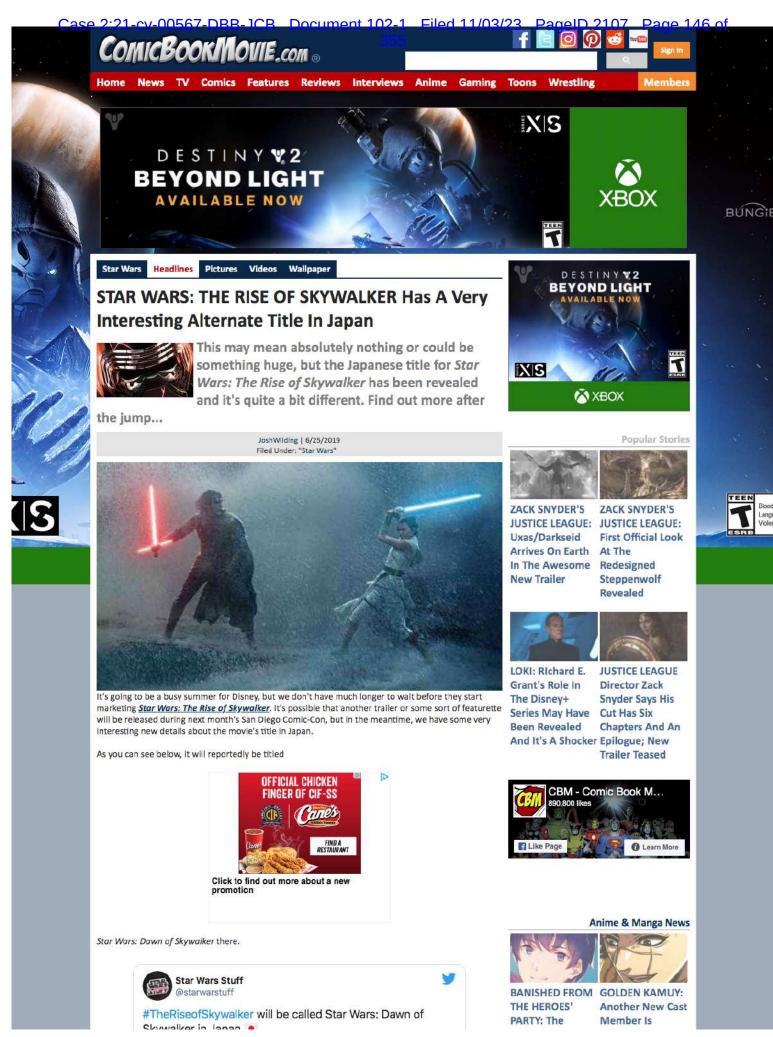




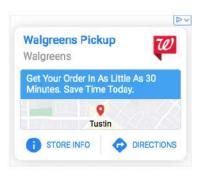
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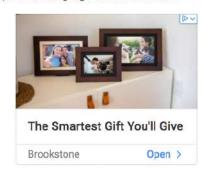






Now, translation issues mean titles are changed overseas all the time so we may not want to read too much into this. However, this title definitely alludes to a new beginning of sorts for the Skywalker family and could be considered "confirmation" of those rumours that the new name for Force users moving forward will be "Skywalker." We'll just have to wait and see, though!

Ultimately, we still don't know what either title really means or which Skywalker they refer to. Is Rey somehow related to Luke, or is Ben Solo going to be redeemed at last?



Let us know your theories in the comments section!

Hit the "View List" button to check out some of the biggest reveals from Vanity Fair's Star Wars: The Rise of Skywalker cover story!



### The End For The Sith...Or Jedi?



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It's pretty obvious that the stakes in The Rise of Skywalker will be high, but Vanity Fair's sources have dropped a bombshell which may completely re-evaluate how we look at this final chapter.

Apparently, the movie is finally going to bring an end to the millennia-long conflict between the Jedi Order and the Sith, and that means one of these groups is going to be destroyed for good.



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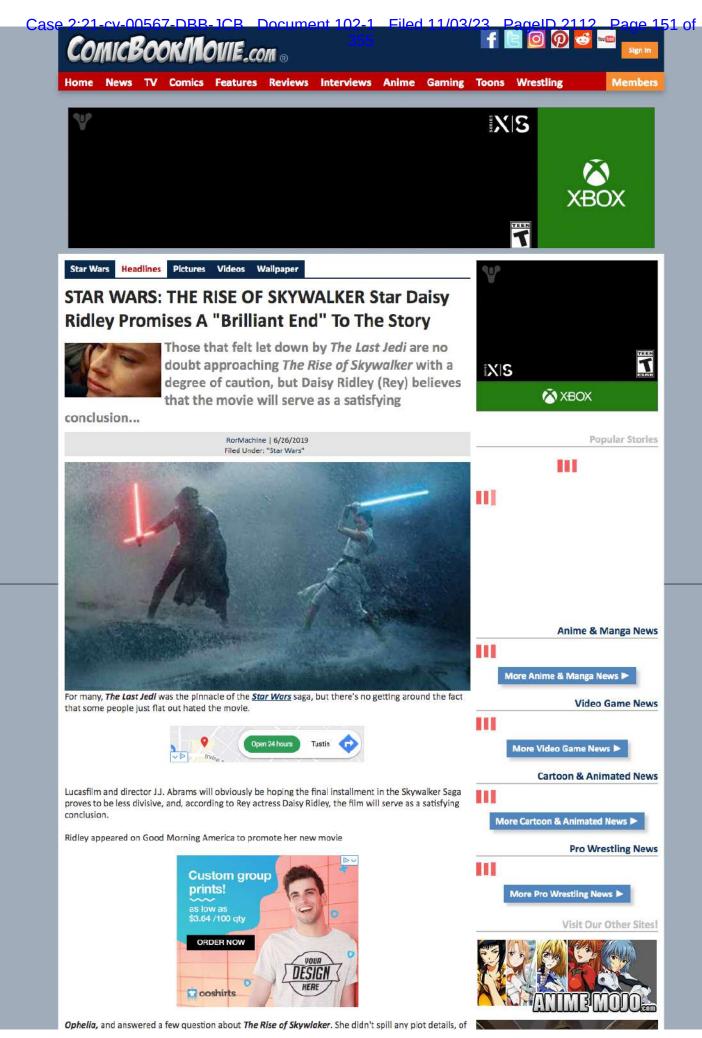




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Case 2:21-cy-00567-DBB-JCB Document 102-1 Filed 11/03/23 Page ID 2113 Page 152 of course, but she did talk about how she felt shooting her final scenes as Rey, the emotional speech she









Ridley is probably a little biased, and an actor praising the movie they're about to appear in is hardly big news. Still, we're going to remain optimistic about this one and take her word for it.

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What do you guys think? Looking forward to *The Rise of Skywalker*? Drop us a comment down below.





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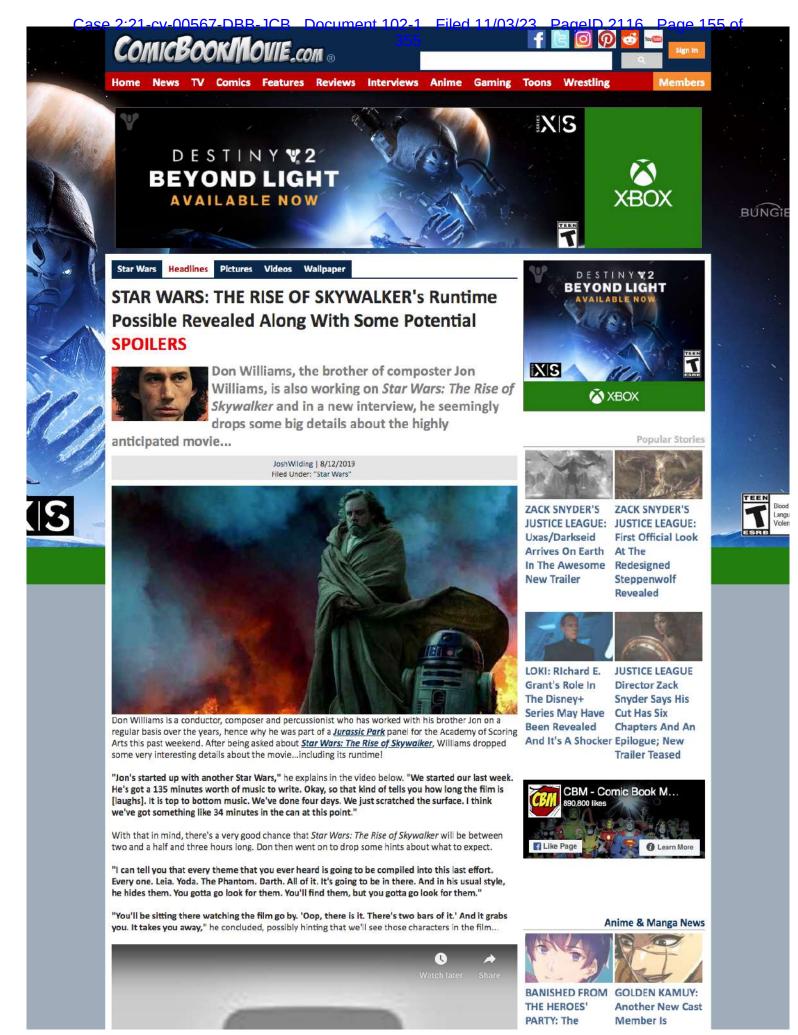
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Hit the "View List" button to check out some of the biggest Star Wars: The Rise of Skywalker rumours!

### Kylo Ren's "Creepy Castle" On Mustafar



There's a scene in The Rise of Skywalker trailer where a sinister looking hairy hand can be seen repairing Kylo Ren's shattered mask. Apparently, that "ape man" has been described as the owner or caretaker of a "Creepy Castle/Sith Temple" which Kylo and his Knights of Ren are based at in the film.

It's said that this alien not only fixes Ren's mask but helps him activate a device which will allow the villain and his Knights to achieve their goals. Your guess is as good as ours when it comes to what that might mean, but it's thought that this sequence could take place on Mustafar, so there's a chance we'll finally get to visit Darth Vader's old castle on the planet...









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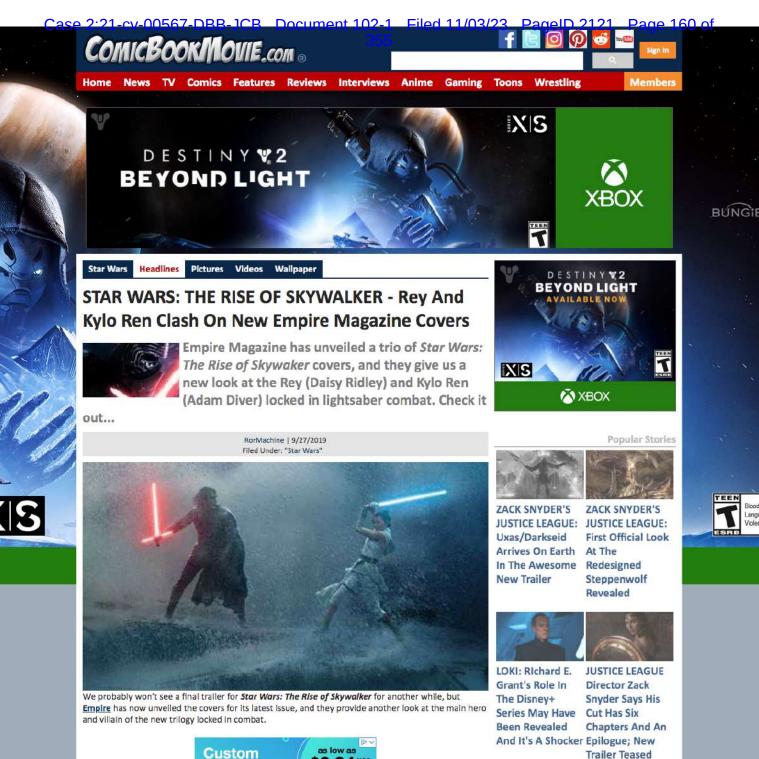
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There are two separate covers for Rey and Kylo, and a third featuring the representatives of the light and dark sides of the force standing together.

There are persistent rumors that Kylo Ren (Adam Driver) will ultimately turn his back on the dark side of the force and team up with Rey (Dalsy Ridley) to put an end to Emperor Palpatine, but that obviously remains to be seen. Even if that proves to be true, it's clear from these covers and the previous trailers that they will throw down one final time first.





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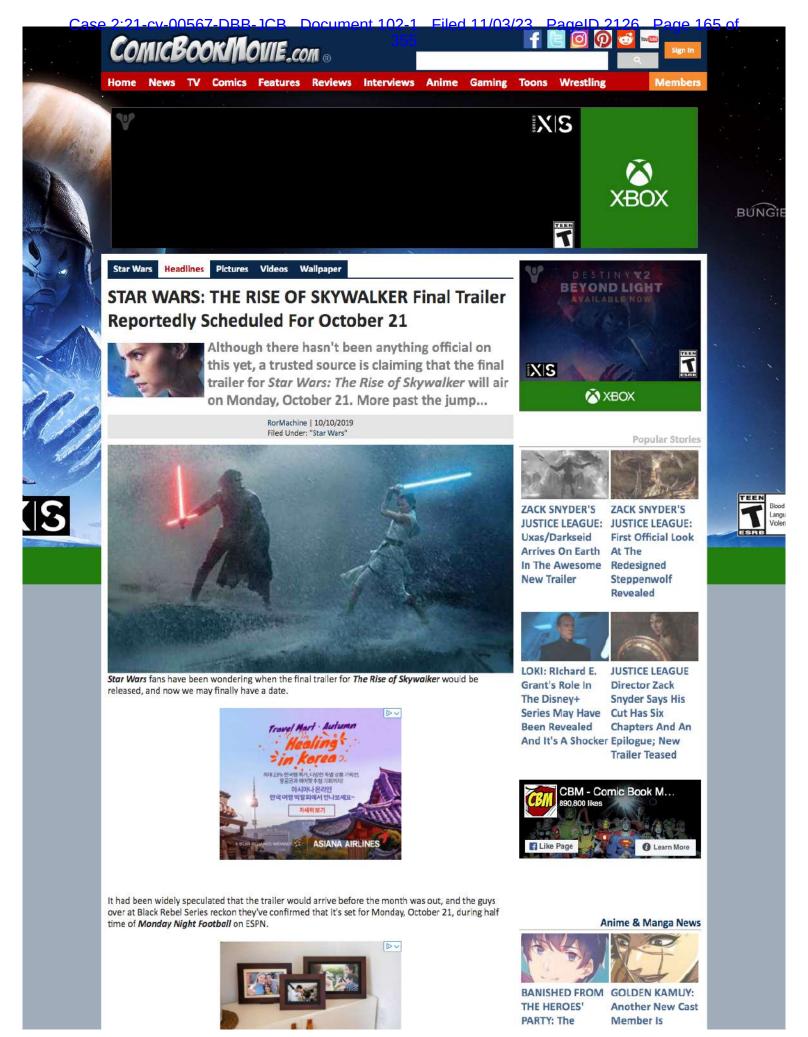
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The trailer is coming 10/21. Take that shit to the bank. de pic.twitter.com/A5FIKJ6808

- Black Series Rebels (@BlkSeriesRebels) October 9, 2019

We'll have to take this as a rumor until we hear something official, but the source has been spot on when it comes to trailer dates in the past, and Disney has previously aired









DV

Star Wars spots during MNF. It may also be worth noting that October 21 is the birthday of the late Carrie Fisher!

We'll update as soon as we hear more, but for now let us know what you hope to see from the trailer, and check out Hasbro's latest range of Black Series action figures by clicking the view list button below.









To see all of the images at once, simply click on the VIEW LIST (ONE PAGE) button below!



Rey







Rey (Daisy Ridley) comes with several accessories including new Rise of Skywalker droid D-O and the lightsaber we saw her wield in the trailers. Yes, the weapon is indeed the same one that was destroyed in The Last Jedi.

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"Rey carries the lightsaber once belonging to Anakin and Luke Skywalker, its shattered pieces reunited, as she continues down the Jedi path."









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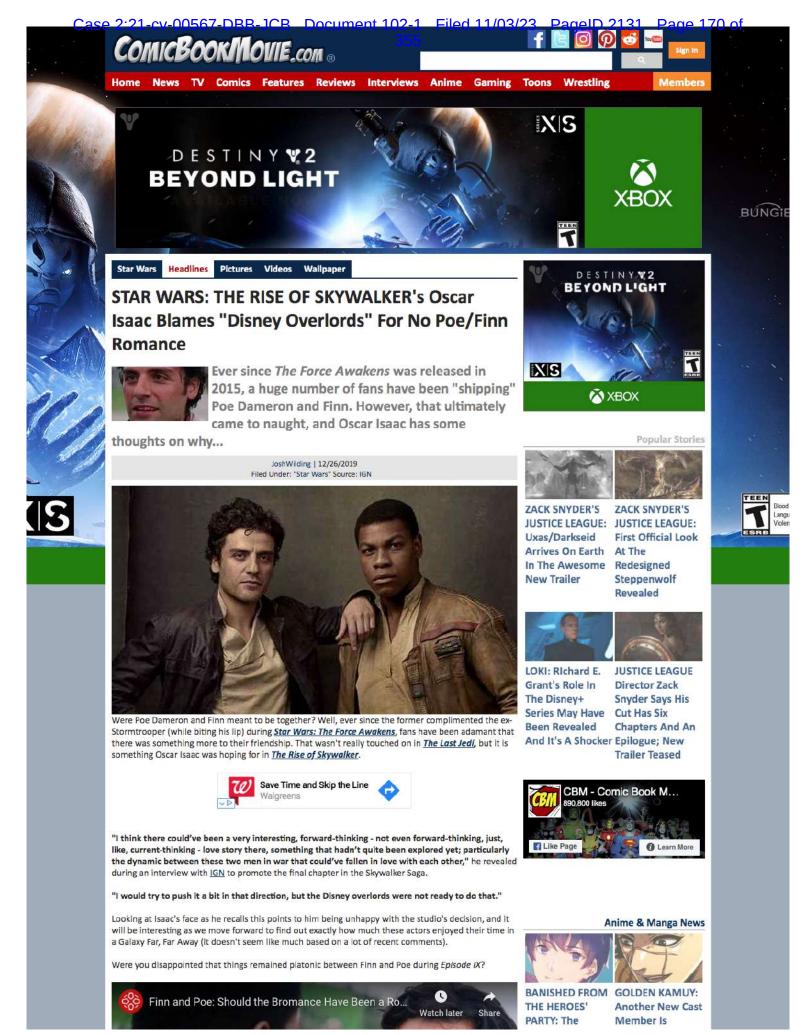
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Check out some amazing Star Wars: The Rise of Skywalker Hot Toys action figures by hitting the "View List" button below!

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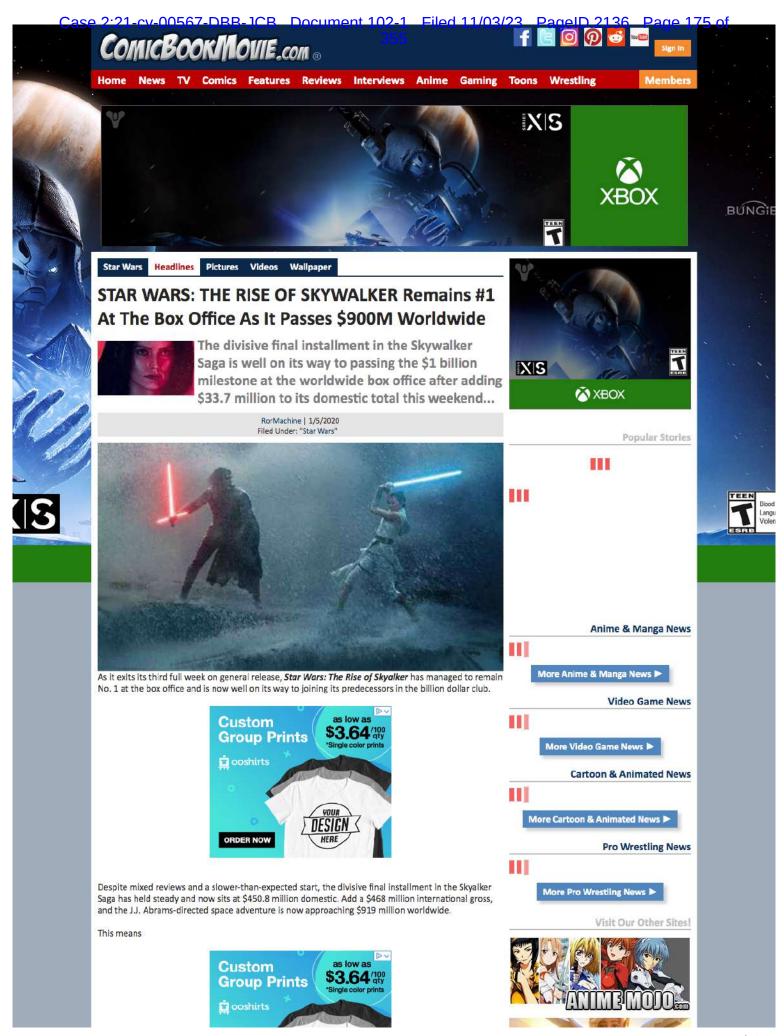
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The Rise of Skywalker will likely pass \$1 billion at some point during the week if it maintains its current pace.



Tell us, have you been to see *The Rise of Skywalker*? If so, do you think the general consensus is accurate? Let us know in the comments, and as long as you don't mind spoilers, be sure to check out our rundown of all the biggest reveals and most shocking moments below.



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### The Return of Emperor Palpatine



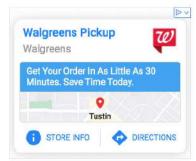
The Rise of Skywalker wastes no time in (re)introducing the saga's big bad, Emperor Palpatine.

After a brief action sequence which culminates with Kylo Ren getting his hands on a "Sith Wayfinder," the Supreme Leader uses the device to track down the ancient villain on the Sith homeworld. It's never fully explained how Palpatine was able to resurrect himself, but it is strongly hinted that cloning was involved. It's also confirmed that The Emperor "made" Snoke and was speaking through him all along.









Palpatine tells Ren that he cam become the new Emperor with the might of the "Final Order" behind him if he finds and kills Rey.







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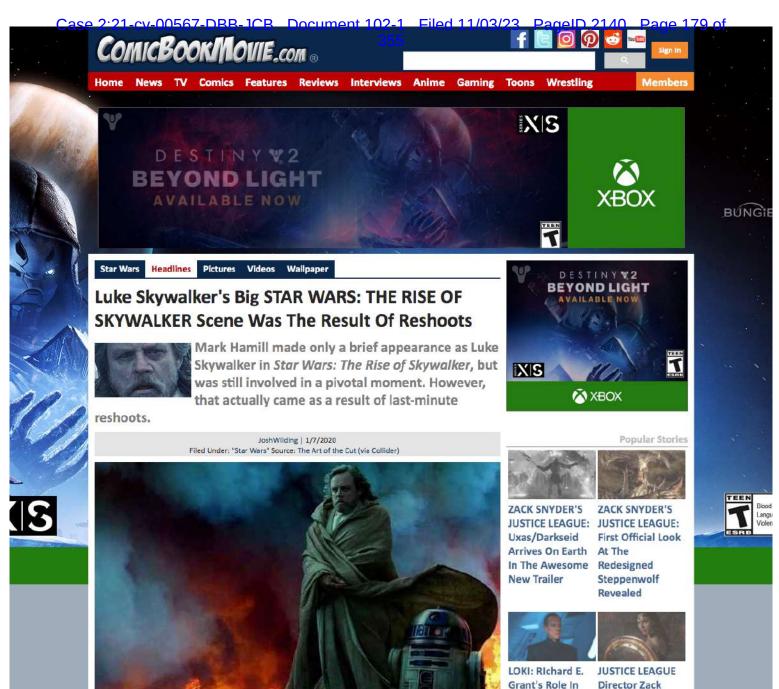
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Star Wars: The Rise of Skywalker wasn't exactly plagued by production issues like Rogue One and Solo, but J.J. Abrams wasn't given a huge amount of time to make his finale to the Skywalker Saga and, as is to be expected with the majority of blockbusters these days, reshoots ultimately took place.



The Disney+

Series May Have

Been Revealed

That additional photography may have changed the movie more than previously realised, though, because editor Maryann Brandon has revealed that as well as Rey's introduction (where she's floating and calling out to the Jedi from the past), Luke Skywalker's return as a Force Ghost on Ahch-To was part of those reshoots.





And It's A Shocker Epilogue; New

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"The scene on the island with Luke, when Luke sees Rey," Brandon con 255 The film kind of informed us, after it was together, what it needed to say so we went back and got that dialogue. There was like a funny moment between Poe and Rev when he lands the Falcon and it's on fire, we wanted to have a more humorous exchange between them. Nothing major, no."

It sounds like Rey was always going to see Luke there, but changes were clearly made, and considering what the characters talked about was so impactful to the final act - we learned about Luke training Leia and the fact they knew Rey was a Palpatine - it's hard not to wonder how this sequence was reshaped.

In Vanity Fair's initial article about The Rise of Skywalker, Luke was shown standing alongside R2-D2 as a fire raged in the background, so it's possible he was once going to appear in flashbacks and that we would have learned more about the destruction of the Jedi Temple (a plot point which is currently being explored in The Rise of Kylo Ren comic book series from Marvel).

What are your thoughts on these comments from the movie's editor?

For more Star Wars: The Rise of Skywalker reveals, simply click on the "View List" button down below!

### Sith Trooper Legions Confirm The Return Of Some "Legends" Characters



The Sith Troopers end up doing pretty much nothing in The Rise of Skywalker and aren't really all that different to regular Stormtroopers. Interestingly, Emperor Palpatine has named each of the Final Order's legions after the Siths of old, many of whom are Expanded Universe/Legends characters who have now been made canon again as a result.

Those are Revan, Andeddu, Tanis, Tenebrous, Desolous, and Phobos, and it's fair to say that most fans will be particularly excited by the return of Knights of the Old Republic standout, Darth Revan. Andeddu hails from the Tails of the Jedi comic book, Tenebrous was Darth Plagueis' Master, and both Desolous and Phobos were introduced in The Force Unleashed.

As for Tanis, that's a new creation who built a weapon of some sort on the planet Malachor.









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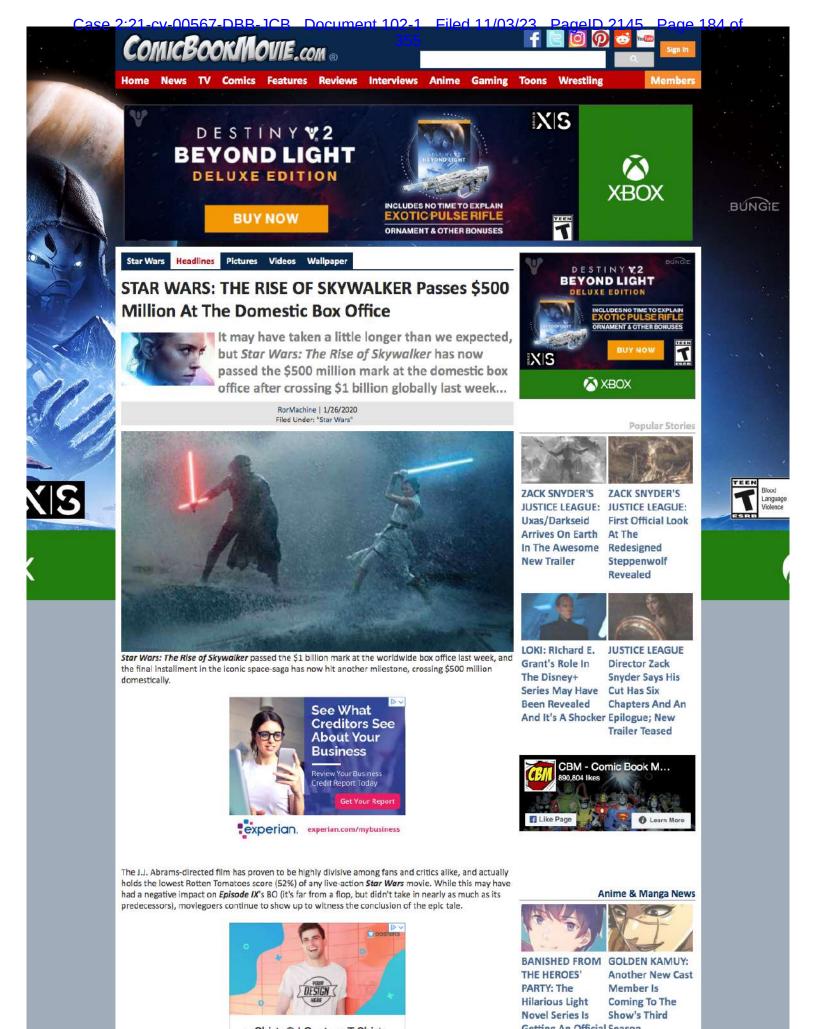


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Elsewhere at the U.S. box office, Guy Ritchie's The Gentlemen had a respectable opening weekend, but it was left in the dust by



Bad Boys for Life. Head on over to Variety for more details.





How many times have you been to see The Rise of Skywalker? Let us know in the comments, and be sure to check out our rundown of all the movie's biggest reveals and most shocking moments below.





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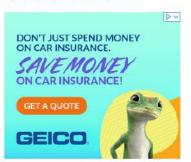
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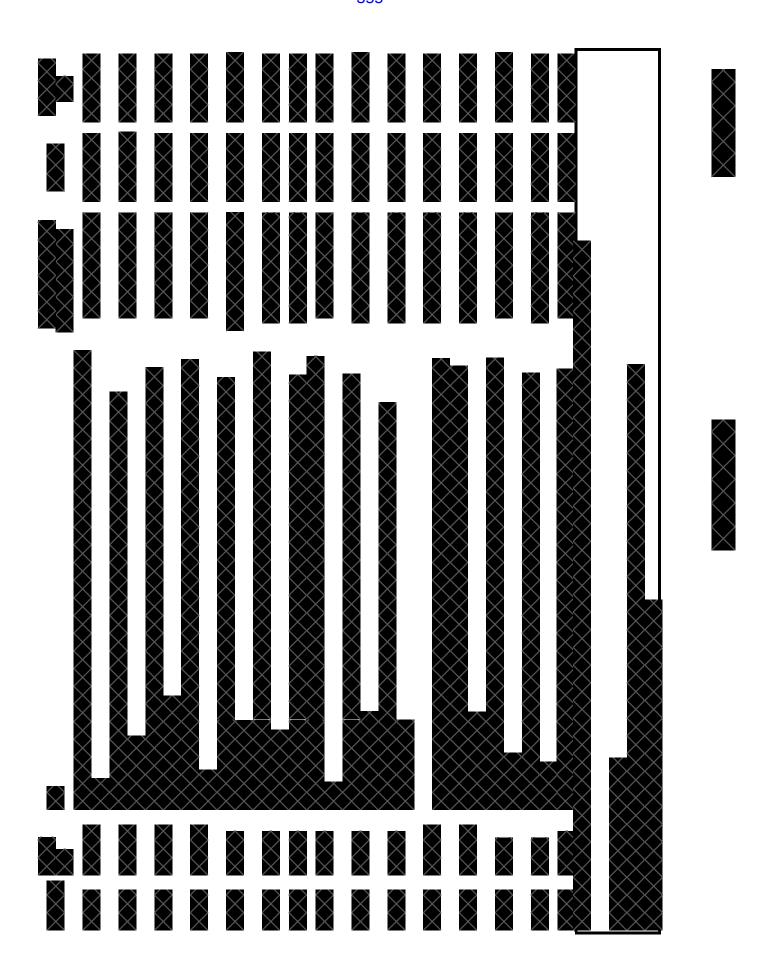






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Attorneys for Defendants ComicBookMovie.com, Nathan Best, Mark Cassidy, and Joshua Wilding

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GREAT BOWERY, d/b/a TRUNK ARCHIVE

Plaintiff,

VS.

BEST LITTLE SITES, d/b/a www.comicbookmovie.com; NATHAN BEST; MARK CASSIDY; JOSHUA WILDING; and DOES 1 through 10.

Defendants.

DEFENDANT BEST LITTLE SITES d/b/a/ www.comicbookmovie.com's RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Case No. 2:21-cv-00567-DBP

District Judge: David Barlow

Magistrate Judge: Jared C. Bennett

Defendant BEST LITTLE SITES d/b/a/ www.comicbookmovie.com ("Defendant"), by and through its undersigned counsel of record, hereby submits its responses to Plaintiff Great Bowery, d/b/a Trunk Archive's ("Plaintiff") First Set of Interrogatories pursuant to Fed R. Civ. P. 26 and 33.

#### GENERAL OBJECTIONS

1. Defendant objects to Plaintiff's Definitions and Instructions to the extent that they exceed the obligations under Federal Rule of Civil Procedure 26 and/or 33.

- 2. Defendant objects to these Interrogatories to the extent that they seek information protected by the attorney-client privilege, the work-product doctrine, trial preparation materials, other material protected under the Federal Rules of Civil Procedure, or any other valid privilege.
  - 3. Defendant reserves the right to supplement or correct these responses as necessary.

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#### **INTERROGATORY NO. 1**

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Subject to and without waiving its objections, Defendant responds that Website content is publicly available at <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> and its subpages and domains. Website content can also be accessed through an administrative interface that allows the creation, editing, and deletion of content. Content can also be access directly through database administration software.

## **INTERROGATORY NO. 2**

DESCRIBE IN DETAIL YOUR relationship with YOUR contributors as referenced in YOUR initial disclosures.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to what constitutes Defendant's "relationship with [its] contributors" and does not define the terms with enough specificity to permit a response. Defendant further objects to this Interrogatory as overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b).

Defendant has had numerous contributors over the nineteen years that it has operated its Website.

A detailed description of Defendant's relationship with these contributors over these years is not feasible.

Subject to and without waiving its objections, Defendant responds that contributors have the ability to apply to Defendant's paid contributor program which allows for the possibility of earning money from their posts to the Website. These contributors receive payment based on ad revenue generated from views on content they have posted. Contributors are independent contractors and operate independent of Defendant, pursuant to Defendant's policies, terms, and guidelines.

#### **INTERROGATORY NO. 3**

DESCRIBE IN DETAIL YOUR relationship with Mark Cassidy as referenced in YOUR initial disclosures.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to what constitutes Defendant's "relationship with Mark Cassidy" and does not define the terms with enough specificity to permit a response. Defendant further objects to this Interrogatory as overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b).

Subject to and without waiving its objections, Defendant responds that Mark Cassidy has been a contributor to Defendant's Website since approximately December 2008. Cassidy is an independent contractor and has agreed to Defendant's policies, terms, and guidelines. Cassidy is a member of Defendant's paid contributor program and receives payment based on ad revenue generated through views on content that he posts.

#### **INTERROGATORY NO. 4**

DESCRIBE IN DETAIL any responsibilities that Mark Cassidy has RELATED TO the WEBSITE.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to what constitutes "responsibilities that Mark Cassidy has related to the website" and does not define the terms with enough specificity to permit a response. Defendant further objects to this Interrogatory as overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b).

Subject to and without waiving its objections, Defendant responds that Cassidy has a responsibility to comply with Defendant's terms, policies, and guidelines in the content that he posts on the Website. This includes, but is not limited to, tailoring content to the comic book movie genre, not posting spoilers, and using correct grammar and punctuation. Cassidy also has the ability, but not responsibility, to remove content from the Website's front page if it does not comply with CBM's terms, policies, and guidelines and to perform minor revisions to those articles to bring them into compliance.

#### INTERROGATORY NO. 5

DESCRIBE IN DETAIL YOUR relationship with Joshua Wilding as referenced in YOUR initial disclosures.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to what constitutes Defendant's "relationship with Josh Wilding" and does not define the terms with enough specificity to permit a response. Defendant further objects to this Interrogatory as overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b).

Subject to and without waiving its objections, Defendant responds that Josh Wilding has been a contributor to Defendant's Website since approximately April 2009. Wilding is an independent contractor and has agreed to Defendant's policies, terms, and guidelines. Wilding is a member of Defendant's paid contributor program and receives payment for the content that he posts.

#### **INTERROGATORY NO. 6**

DESCRIBE IN DETAIL any responsibilities that Joshua Wilding has RELATED TO the WEBSITE.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to what constitutes "responsibilities that Joshua Wilding has related to the website" and does not define the terms with enough specificity to permit a response. Defendant further objects to this Interrogatory as overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b).

Subject to and without waiving its objections, Defendant responds that Wilding has a responsibility to comply with Defendant's terms, policies, and guidelines in the content that he posts on the Website. This includes, but is not limited to, tailoring content to the comic book movie genre, not posting spoilers, and using correct grammar and punctuation.

#### **INTERROGATORY NO. 7**

DESCRIBE IN DETAIL any responsibilities that Nathan Best has RELATED TO the WEBSITE.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to what constitutes "responsibilities that Nathan Best has related to the website" and does not

define the terms with enough specificity to permit a response. Defendant further objects to this Interrogatory as overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b).

Subject to and without waiving its objections, Defendant responds that Nathan Best is CBM's owner and the sole operator for the Website. Best's responsibilities include maintaining the domain and host registration; serving as the DMCA registered agent; designing the layout and design of the Website; maintaining the Website and resolving technical issues; processing payments to contributors; negotiating contracts with advertisers; creating the static content on the Website; developing and drafting the Website's policies, guidelines, and procedures; strategic development regarding the growth and direction of the Website; protecting the reputation and image of the Website; making sure the Website's corporate registration is active; and resolving questions or disputes regarding contributor content and payments.

#### **INTERROGATORY NO. 8**

DESCRIBE IN DETAIL the means by which you gain revenue as referenced in YOUR initial disclosures.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to what constitutes "gain[ing] revenue" and does not define the terms with enough specificity to permit a response. Defendant further objects to this Interrogatory as overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b).

Subject to and without waiving its objections, Defendant responds that it primarily generates revenue by displaying advertisements on its website through various ad networks. The ad revenue generated is related to several factors including how long a user remains on a page that

is displaying ads, the number of views generated by pages that display the ads, how many ads are displayed on a page, any clicks generated by the ads that are displayed, the advertisers in charge of creating and displaying the advertisements, the time of year, and the going rate for digital advertising."

# **INTERROGATORY NO. 9**

For each of the ARTICLES, DESCRIBE IN DETAIL the source(s) from which the IMAGES were obtained.

**RESPONSE:** Defendant object to this Interrogatory because it is overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b). As written, this Interrogatory seeks a detailed description of "the source" of multiple images posted in fifteen separate articles posted at different times over several years by someone other than Defendant. These are discrete actions with potentially different responses for each. As such, these are not appropriately contained within one interrogatory. Rather than attempt to answer the first handful of discrete subparts before objecting to the rest and exhausting Plaintiff's discovery limit, Defendant objects to the multi-part Interrogatory as a whole.

Subject to and without waiving its objections, Defendant responds that it is not aware of the source from which the authors of the articles in question obtained the images for those articles.

#### **INTERROGATORY NO. 10**

For each of the ARTICLES, DESCRIBE IN DETAIL the purposes for which the IMAGES were used.

**RESPONSE:** Defendants object to this Interrogatory because it is overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b). As written, this Interrogatory

seeks a detailed description of "the purpose" for why each of multiple images was used in fifteen separate articles posted at different times over several years by someone other than Defendant. These are discrete instances with potentially different responses for each. As such, these are not appropriately contained within one interrogatory. Rather than attempt to answer the first handful of discrete subparts before objecting to the rest and exhausting Plaintiff's discovery limit, Defendant objects to the multi-part Interrogatory as a whole. Defendant also objects to this Interrogatory because it is vague and ambiguous as to what constitutes "the purpose for which the images were used" and does not define the term with enough specificity to permit a response.

Subject to and without waiving its objections, Defendant responds that the images in question were included in posts made by users of Defendant's website.

### **INTERROGATORY NO. 11**

DESCRIBE IN DETAIL the process by which the ARTICLES were published on the WEBSITE.

RESPONSE: Defendants object to this Interrogatory because it is overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b). As written, this Interrogatory seeks a detailed description of "the process" by which fifteen discrete articles were published on the website by multiple authors over a 2+ year period, some of which were posted five years ago, and all of which were posted by individuals other than Defendant. These are discrete instances with potentially different responses for each. As such, these are not appropriately contained within one interrogatory. Rather than attempt to answer the first handful of discrete subparts before objecting to the rest and exhausting Plaintiff's discovery limit, Defendant objects to the multi-part Interrogatory as a whole. Defendant also objects to this Interrogatory because it is vague and

ambiguous as to what constitutes "the process by which the articles were published on the website" and does not define the term with enough specificity to permit a response.

Subject to and without waiving its objections, Defendant responds that in general, contributors can publish articles by logging into their personal accounts in the Website; draft, edit, and format content; agree to the terms and conditions of the website; and publish the content to the Website.

# **INTERROGATORY NO. 12**

DESCRIBE IN DETAIL the rights and responsibilities given by YOU to editors of the WEBSITE.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to who or what constitutes an "editor[] of the WEBSITE," and does not define the term with enough specificity to permit a response.

Subject to and without waiving its objections, Defendant responds that it does not have "editors" to the Website.

## **INTERROGATORY NO. 13**

DESCRIBE IN DETAIL the editorial process for content submitted for publication to the WEBSITE.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to who or what constitutes the "editorial process," and does not define the term with enough specificity to permit a response.

Subject to and without waiving its objections, Defendant responds that it does not have "editors" to the Website or a formal "editorial process." All content is generated by the Website's users.

#### **INTERROGATORY NO. 14**

DESCRIBE IN DETAIL the editorial process undertaken with respect to the ARTICLES.

RESPONSE: Defendants object to this Interrogatory because it is overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b). As written, this Interrogatory seeks a detailed description of "the editorial process" for fifteen discrete articles published on the website by multiple authors over a 2+ year period, some of which were posted five years ago, and all of which were posted by individuals other than Defendant. These are discrete instances with potentially different responses for each. As such, these are not appropriately contained within one interrogatory. Rather than attempt to answer the first handful of discrete subparts before objecting to the rest and exhausting Plaintiff's discovery limit, Defendant objects to the multi-part Interrogatory as a whole. Defendant also objects to this Interrogatory because it is vague and ambiguous as to what constitutes "the editorial process" and does not define the term with enough specificity to permit a response.

Subject to and without waiving its objections, Defendant responds that it does not have "editors" to the Website or a formal "editorial process." All content is generated by the Website's users.

#### **INTERROGATORY NO. 15**

IDENTIFY every PERSON who has ever had editorial privileges with respect to content on the WEBSITE and the time frame in which they possessed such privileges.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to who or what constitutes the "editorial privileges," and does not define the term with enough specificity to permit a response. Defendants object to this Interrogatory because it is overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b) by requesting an identification of persons with an undefined privilege over a nineteen-year period without a reasonable limitation on time, subject matter, or connection to the claims and defenses in this case.

Subject to and without waiving its objections, Defendant responds that each contributor has the ability to edit or delete articles that he or she has posted to Defendant's Website. Nate Best has full administrative rights to modify or delete any content on the Website. Mark Cassidy, through a separate account, has the ability to move articles off of the Website homepage if they do not meet the Website's terms, guidelines, and policies.

# **INTERROGATORY NO. 16**

Is YOUR response to each request for admission served concurrently with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:

- (a) state the number of the request;
- (b) state all facts upon which YOU base YOUR response;
- (c) state the name, address, and telephone number of each PERSON who has knowledge of those facts; and
- (d) identify all DOCUMENTS and other tangible things that support YOUR response and state the name, address, and telephone number of the PERSON who has each document or thing.

RESPONSE: Defendant object to this Interrogatory because it is overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b). As written, this Interrogatory seeks (a) all supporting facts, (b) the identity of each person who has knowledge of those facts, (c) the contact information for those people, (d) an identification of all supporting documents, (e) the identity of the person who has each document, and (f) the contact information of those people. The Interrogatory seeks all of this information for every request for admission that is "not an unqualified admission." So far, Plaintiff has propounded 128 requests for admission to Defendant, which also exceeds the limits on request for admission. This is a multi-part Interrogatory in the extreme and goes far beyond the permissible discovery scope and limits. In the same vein, Defendant objects because this undefined Interrogatory does not define the information it seeks without enough specificity to permit a response. Rather than attempt to answer the first handful of discrete subparts before objecting to the rest and exhausting Plaintiff's discovery limits, Defendant objects to this multi-part Interrogatory as a whole. Defendants further object to the extent this Interrogatory is duplicative of any of its other Requests.

#### INTERROGATORY NO. 17 [originally numbered as the second No. 16]

IDENTIFY each PERSON who assisted in the preparation of these responses.

**RESPONSE:** Defendant objects to this Interrogatory because it is not reasonably related to any claim or defense. Given the limited scope of the discrete claims at issue, it is not proper to exceed the ordinary scope of discovery under Rule 26(b) to seek this information. Defendant further objects to the extent this Interrogatory seeks information protected by attorney-client privilege or any other privilege.

#### FRCP 33(b)(5) VERIFICATION

I, Nathan Best, am the owner of Best Little Sites d/b/a <a href="www.comicbookmovie.com">www.comicbookmovie.com</a>. I have read the foregoing responses to Plaintiff's First Set of Interrogatories and declare under penalty of perjury that the information set forth therein is true and correct to the best of my knowledge.

Executed on October 21, 2022.

<u>/s/ Nathan Best</u> (electronic signature affixed with permission)

DATE: October 21, 2022

KIMBALL ANDERSON

/s/ William B. Chadwick

Robert E. Aycock William B. Chadwick

Attorneys for Defendants ComicBookMovie.com, Nathan Best, Mark Cassidy, and Joshua Wilding

# **CERTIFICATE OF SERVICE**

I certify that on October 21, 2022, I caused a true and correct copy of the foregoing DEFENDANT BEST LITTLE SITES d/b/a/ www.comicbookmovie.com's RESPONSES TO PLAINTIFF'S FIRST SET INTERROGATORIES to be served via email to the following:

Mathew K. Higbee
Ryan E. Carreon
HIGBEE & ASSOCIATES
1504 Brookhollow Drive, Suite #112
Santa Ana, CA 92705
mhigbee@higbeeassociates.com
rcarreon@higbeeassociates.com

Attorneys for Plaintiff Trunk Archive

/s/ William B. Chadwick

# Exhibit 38

Robert E. Aycock (#8878) William B. Chadwick (#16416) KIMBALL ANDERSON 649 E. South Temple, 2nd Floor Salt Lake City, UT 84102 Phone: (801) 359-3333 robert@kimballanderson.com will@kimballanderson.com

Attorneys for Defendants ComicBookMovie.com, Nathan Best, Mark Cassidy, and Joshua Wilding

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

GREAT BOWERY, d/b/a TRUNK ARCHIVE

Plaintiff,

VS.

BEST LITTLE SITES, d/b/a www.comicbookmovie.com; NATHAN BEST; MARK CASSIDY; JOSHUA WILDING; and DOES 1 through 10.

Defendants.

# DEFENDANT NATHAN BEST'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Case No. 2:21-cv-00567-DBP

District Judge: David Barlow

Magistrate Judge: Jared C. Bennett

Defendant Nathan Best ("Defendant"), by and through his undersigned counsel of record, hereby submits his responses to Plaintiff Great Bowery, d/b/a Trunk Archive's ("Plaintiff") First Set of Interrogatories pursuant to Fed R. Civ. P. 26 and 33.

#### **GENERAL OBJECTIONS**

1. Defendant objects to Plaintiff's Definitions and Instructions to the extent that they exceed the obligations under Federal Rule of Civil Procedure 26 and/or 33.

- 2. Defendant objects to these Interrogatories to the extent that they seek information protected by the attorney-client privilege, the work-product doctrine, trial preparation materials, other material protected under the Federal Rules of Civil Procedure, or any other valid privilege.
  - 3. Defendant reserves the right to supplement or correct these responses as necessary.

#### **INTERROGATORIES**

### **INTERROGATORY NO. 1**

DESCRIBE IN DETAIL any responsibilities that YOU have RELATED TO the WEBSITE.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to what constitutes "responsibilities . . . related to the Website," and does not define the term with specificity to permit a response.

Subject to and without waiving his objections, Defendant responds that he is the owner and founder of Best Little Sites d/b/a <a href="www.comicbookmovie.com">www.comicbookmovie.com</a>. His responsibilities include maintaining the domain and host registration; serving as the DMCA registered agent; designing the layout and design of the Website; maintaining the Website and resolving technical issues; processing payments to contributors; negotiating contracts with advertisers; creating the static content on the Website; developing and drafting the Website's policies, guidelines, and procedures; strategic development regarding the growth and direction of the Website; protecting the reputation and image of the Website; making sure the Website's corporate registration is active; and resolving questions or disputes regarding contributor content and payments.

## **INTERROGATORY NO. 2**

DESCRIBE IN DETAIL YOUR ability to supervise and control the content on CBM's website as described in YOUR initial disclosures.

RESPONSE: Subject to and without waiving his objections, Defendant responds that he has full administrative access to the Website. Defendant has the ability to view all content posted on the website and all content queued for future posts. Defendant can edit the content of any post or delete any post. Defendant also has the ability to delete comments on the posted content. Defendant is the registered DMCA Agent for the Website and, when a proper DMCA take-down notice is received, Defendant removes the offending content.

## **INTERROGATORY NO. 3**

DESCRIBE IN DETAIL all actions that YOU took with respect to each of the ARTICLES prior to their publication on the WEBSITE.

RESPONSE: Defendants object to this Interrogatory because it is overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b). As written, this Interrogatory seeks a detailed description of "all actions" Defendant took with respect to fifteen separate articles posted at different times over several years. These are discrete actions with potentially different responses for each. As such, these are not appropriately contained within one interrogatory. Rather than attempt to answer the first handful of discrete subparts before objecting to the rest and exhausting Plaintiff's discovery limit, Defendant objects to the multi-part Interrogatory as a whole.

#### **INTERROGATORY NO. 4**

DESCRIBE IN DETAIL the rights and responsibilities given by YOU to editors of the WEBSITE.

**RESPONSE:** Defendant objects to this Interrogatory because it is vague and ambiguous as to who or what constitutes an "editor[] of the WEBSITE," and does not define the term with enough specificity to permit a response.

Subject to and without waiving his objections, Defendant responds that the Website has "contributors" but it does not have "editors." Moreover, Defendant does not grant rights or responsibilities within his personal capacity to anyone in relation to the Website. Any rights or responsibilities associated with the website are given or assigned by Best Little Sites, d/b/a www.comicbookmovie.com, and not Defendant.

## **INTERROGATORY NO. 5**

Is YOUR response to each request for admission served concurrently with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:

- (a) state the number of the request;
- (b) state all facts upon which YOU base YOUR response;
- (c) state the name, address, and telephone number of each PERSON who has knowledge of those facts; and
- (d) identify all DOCUMENTS and other tangible things that support YOUR response and state the name, address, and telephone number of the PERSON who has each document or thing.

**RESPONSE:** Defendant object to this Interrogatory because it is overbroad, unduly burdensome, and exceeds the scope and limits set forth in Rule 26(b). As written, this Interrogatory seeks (a) all supporting facts, (b) the identity of each person who has knowledge of those facts, (c) the contact information for those people, (d) an identification of all supporting documents, (e) the

identity of the person who has each document, and (f) the contact information of those people. The Interrogatory seeks all of this information for every request for admission that is "not an unqualified admission." So far, Plaintiff has propounded twenty-six requests for admission to Defendant. This is a multi-part Interrogatory in the extreme and goes far beyond the permissible discovery scope and limits. In the same vein, Defendant objects because this undefined Interrogatory does not define the information it seeks with enough specificity to permit a response. Rather than attempt to answer the first handful of discrete subparts before objecting to the rest and exhausting Plaintiff's discovery limits, Defendant objects to this multi-part Interrogatory as a whole. Defendants further object to the extent this Interrogatory is duplicative of any of its other Requests.

### **INTERROGATORY NO. 6**

IDENTIFY each PERSON who assisted in the preparation of these responses.

**RESPONSE:** Defendant objects to this Interrogatory because it is not reasonably related to any claim or defense. Given the limited scope of the discrete claims at issue, it is not proper to exceed the ordinary scope of discovery under Rule 26(b) to seek this information. Defendant further objects to the extent this Interrogatory seeks information protected by attorney-client privilege or any other privilege.

# FRCP 33(b)(5) VERIFICATION

I, Nathan Best, have read the foregoing responses to Plaintiff's First Set of Interrogatories and declare under penalty of perjury that the information set forth therein is true and correct to the best of my knowledge.

Executed on October 21, 2022.

/s/ Nathan Best (electronic signature affixed with permission)

DATE: October 21, 2022

KIMBALL ANDERSON

/s/ William B. Chadwick
Robert E. Aycock
William B. Chadwick

Attorneys for Defendants ComicBookMovie.com, Nathan Best, Mark Cassidy, and Joshua Wilding

# **CERTIFICATE OF SERVICE**

I certify that on October 21, 2022, I caused a true and correct copy of the foregoing

DEFENDANT NATHAN BEST'S RESPONSES TO PLAINTIFF'S FIRST SET

INTERROGATORIES to be served via email to the following:

Mathew K. Higbee
Ryan E. Carreon
HIGBEE & ASSOCIATES
1504 Brookhollow Drive, Suite #112
Santa Ana, CA 92705
mhigbee@higbeeassociates.com
rcarreon@higbeeassociates.com

Attorneys for Plaintiff Trunk Archive

/s/ William B. Chadwick

# Exhibit 39

Robert E. Aycock (#8878) William B. Chadwick (#16416) KIMBALL ANDERSON 649 E. South Temple, 2nd Floor Salt Lake City, UT 84102 Phone: (801) 359-3333 robert@kimballanderson.com will@kimballanderson.com

Attorneys for Defendants ComicBookMovie.com, Nathan Best, Mark Cassidy, and Joshua Wilding

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

GREAT BOWERY, d/b/a TRUNK ARCHIVE

Plaintiff,

VS.

BEST LITTLE SITES, d/b/a www.comicbookmovie.com; NATHAN BEST; MARK CASSIDY; JOSHUA WILDING; and DOES 1 through 10.

Defendants.

DEFENDANT NATHAN BEST'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION

Case No. 2:21-cv-00567-DBP

District Judge: David Barlow

Magistrate Judge: Jared C. Bennett

Defendant Nathan Best ("Defendant"), by and through his undersigned counsel of record, hereby submits his responses to Plaintiff Great Bowery, d/b/a Trunk Archive's ("Plaintiff") First Set of Requests for Admissions pursuant to Fed R. Civ. P. 26 and 36.

#### **GENERAL OBJECTIONS**

1. Defendant objects to Plaintiff's Definitions and Instructions to the extent that they exceed the obligations under Federal Rule of Civil Procedure 26 and/or 36.

2. Defendant objects to these Requests to the extent that they seek information

protected by the attorney-client privilege, the work-product doctrine, trial preparation materials,

other material protected under the Federal Rules of Civil Procedure, or any other valid privilege.

3. Defendant reserves the right to supplement or correct these responses as necessary.

**REQUESTS FOR ADMISSION** 

**REQUEST FOR ADMISSION NO. 1** 

Admit the YOU did not purchase a license for the IMAGES at any time.

**RESPONSE:** Defendant objects to and denies this Request for being impermissibly multi-

part. There are eighteen separate images at question and this Request does not specify which image

is the subject of the Request in a way that permits Defendant to appropriately respond.

**REQUEST FOR ADMISSION NO. 2** 

Admit the YOU are compensated from the revenues generated from the WEBSITE.

**RESPONSE:** Admit that Defendant is compensated as the owner of Best Little Sites, LLC

which owns the Website, and that the Website generates revenue. Deny all other interpretations

and allegations in this Request.

**REQUEST FOR ADMISSION NO. 3** 

Admit that YOU reviewed the article titled "STAR WARS: THE LAST JEDI Actress

Laura Dern Shares New Image Of Vice Admiral Amilyn Holdo" prior to its publication on the

WEBSITE.

**RESPONSE:** Denied.

2

**REQUEST FOR ADMISSION NO. 4** 

Admit that YOU reviewed the article titled "STAR WARS: THE LAST JEDI International

TV Spot Features Benicio Del Toro As The Mysterious DJ" prior to its publication on the

WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 5** 

Admit that YOU reviewed the article titled "STAR WARS: THE LAST JED's Mark

Hamill Shares A Lovely Tribute To Carrie Fisher One Year After Her Passing" prior to its

publication on the WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 6** 

Admit that YOU reviewed the article titled "Billie Lourd Shares A Touching Tribute To

Carrie Fisher On The Second Anniversary Of Her Passing" prior to its publication on the

WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 7** 

Admit that YOU reviewed the article titled "STAR WARS: THE RISE OF SKYWALKER

– 12 Biggest Reveals And Spoilers From Vanity Fair's Cover Story" prior to its publication on the

WEBSITE.

**RESPONSE:** Denied.

3

Admit that YOU reviewed the article titled "STAR WARS: THE RISE OF SKYWALKER

Behind The Scenes Video Features New Aliens And Cast Interviews" prior to its publication on

the WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 9** 

Admit that YOU reviewed the article titled "STAR WARS: THE RISE OF SKYWALKER

Has A Very Interesting Alternate Title In Japan" prior to its publication on the WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 10** 

Admit that YOU reviewed the article titled "STAR WARS: THE RISE OF SKYWALKER

Star Daisy Ridley Promises A 'Brilliant End' To The Story" prior to its publication on the

WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 11** 

Admit that YOU reviewed the article titled "STAR WARS: THE RISE OF

SKYWALKER's Runtime Possible [sic] Revealed Along With Some Potential SPOILERS" prior

to its publication on the WEBSITE.

**RESPONSE:** Denied.

Admit that YOU reviewed the article titled "STAR WARS: THE RISE OF SKYWALKER

- Rey And Kylo Ren Clash On New Empire Magazine Covers" prior to its publication on the

WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 13** 

Admit that YOU reviewed the article titled "STAR WARS: THE RISE OF SKYWALKER

Final Trailer Reportedly Scheduled For October 21" prior to its publication on the WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 14** 

Admit that YOU reviewed the article titled "STAR WARS: THE RISE OF

SKYWALKER's Oscar Issaes Blames 'Disney Overlords' For No Poe/Finn Romance" prior to its

publication on the WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 15** 

Admit that YOU reviewed the article titled "STAR WARS: THE RISE OF SKYWALKER

Remains #1 At The Box Office As It Passes \$900M Worldwide" prior to its publication on the

WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 16** 

Admit that YOU reviewed the article titled "Luke Skywalker's Big STAR WARS: THE

RISE OF SKYWALKER Scene Was The Result Of Reshoots" prior to its publication on the

WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 17** 

Admit that YOU reviewed the article titled "STAR WARS: THE RISE OF SKYWALKER

Passes \$500 Million At The Domestic Box Office" prior to its publication on the WEBSITE.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 18** 

Admit that an editor authorized by YOU reviewed each of the ARTICLES before they were

posted on the WEBSITE.

**RESPONSE:** Denied. Defendant responds that CBM has "contributors" but it does not

have "editors." Moreover, Defendant does not grant rights or responsibilities within his personal

capacity to anyone in relation to the Website. Any rights or responsibilities associated with the

website are given or assigned by Best Little Sites, LLC d/b/a www.comicbookmovie.com, and not

Defendant.

**REQUEST FOR ADMISSION NO. 19** 

Admit that YOU have given Mark Cassidy administrative privileges with respect to the

WEBSITE.

**RESPONSE:** Denied. Defendant does not grant rights or responsibilities within his

personal capacity to anyone in relation to CBM's website. Any rights or responsibilities associated

with the website are given or assigned by CBM, and not Defendant.

Admit that YOU have given Mark Cassidy editorial privileges with respect to content appearing on the WEBSITE.

**RESPONSE:** Denied. Defendant does not grant rights or responsibilities within his personal capacity to anyone in relation to CBM's website. Any rights or responsibilities associated with the website are given or assigned by CBM, and not Defendant.

### **REQUEST FOR ADMISSION NO. 21**

Admit that Mark Cassidy is authorized by YOU to make editorial decisions with respect to content appearing on the WEBSITE.

**RESPONSE:** Denied. Defendant does not grant rights or responsibilities within his personal capacity to anyone in relation to CBM's website. Any rights or responsibilities associated with the website are given or assigned by CBM, and not Defendant.

#### **REQUEST FOR ADMISSION NO. 22**

Admit that YOU have given Joshua Wilding administrative privileges with respect to the WEBSITE.

**RESPONSE:** Denied. Defendant does not grant rights or responsibilities within his personal capacity to anyone in relation to CBM's website. Any rights or responsibilities associated with the website are given or assigned by CBM, and not Defendant.

#### **REQUEST FOR ADMISSION NO. 23**

Admit that YOU have given Joshua Wilding editorial privileges with respect to content appearing on the WEBSITE.

**RESPONSE:** Denied. Defendant does not grant rights or responsibilities within his

personal capacity to anyone in relation to CBM's website. Any rights or responsibilities associated

with the website are given or assigned by CBM, and not Defendant.

**REQUEST FOR ADMISSION NO. 24** 

Admit that Joshua Wilding is authorized by YOU to make editorial decisions with respect

to content appearing on the WEBSITE.

**RESPONSE:** Denied. Defendant does not grant rights or responsibilities within his

personal capacity to anyone in relation to CBM's website. Any rights or responsibilities associated

with the website are given or assigned by CBM, and not Defendant.

**REQUEST FOR ADMISSION NO. 25** 

Admit that YOU have the absolute right to reject any content that appears on the WEBSITE

prior to its publication.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 26** 

Admit that YOU do not license any photographs that appear on the WEBSITE.

**RESPONSE:** Denied.

DATE: October 21, 2022

KIMBALL ANDERSON

/s/ William B. Chadwick

Robert E. Aycock

William B. Chadwick

Attorneys for Defendants ComicBookMovie.com, Nathan Best,

Mark Cassidy, and Joshua Wilding

# **CERTIFICATE OF SERVICE**

I certify that on October 21, 2022, I caused a true and correct copy of the foregoing **DEFENDANT NATHAN BEST'S RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION** to be served via email to the following:

Mathew K. Higbee Ryan E. Carreon HIGBEE & ASSOCIATES 1504 Brookhollow Drive, Suite #112 Santa Ana, CA 92705 mhigbee@higbeeassociates.com rcarreon@higbeeassociates.com

Attorneys for Plaintiff Trunk Archive

/s/ William B. Chadwick

# Exhibit 40

Robert E. Aycock (#8878) William B. Chadwick (#16416) KIMBALL ANDERSON 649 E. South Temple, 2nd Floor Salt Lake City, UT 84102 Phone: (801) 359-3333 robert@kimballanderson.com will@kimballanderson.com

Attorneys for Defendants ComicBookMovie.com, Nathan Best, Mark Cassidy, and Joshua Wilding

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

GREAT BOWERY, d/b/a TRUNK ARCHIVE

Plaintiff,

VS.

BEST LITTLE SITES, d/b/a www.comicbookmovie.com; NATHAN BEST; MARK CASSIDY; JOSHUA WILDING; and DOES 1 through 10.

Defendants.

DEFENDANT MARK CASSIDY'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION

Case No. 2:21-cv-00567-DBP

District Judge: David Barlow

Magistrate Judge: Jared C. Bennett

Defendant Mark Cassidy ("Defendant"), by and through his undersigned counsel of record, hereby submits his responses to Plaintiff Great Bowery, d/b/a Trunk Archive's ("Plaintiff") First Set of Requests for Admissions pursuant to Fed R. Civ. P. 26 and 36.

#### **GENERAL OBJECTIONS**

1. Defendant objects to Plaintiff's Definitions and Instructions to the extent that they exceed the obligations under Federal Rule of Civil Procedure 26 and/or 36.

2. Defendant objects to these Requests to the extent that they seek information

protected by the attorney-client privilege, the work-product doctrine, trial preparation materials,

other material protected under the Federal Rules of Civil Procedure, or any other valid privilege.

3. Defendant reserves the right to supplement or correct these responses as necessary.

4. Defendant objects to the Definitions accompanying these Requests, particularly the

definition for "CBM" as being overbroad, vague, and ambiguous. Plaintiff has stated that "CBM"

"means co-Defendant Best Little Sites, LLC d/b/a www.comicbookmovie.com and any PERSON

acting on its behalf." Whether a person is acting on CBM's behalf is undefined, may be in dispute,

and may call for a legal conclusion.

REQUESTS FOR ADMISSION

**REQUEST FOR ADMISSION NO. 1** 

Admit the YOU did not purchase a license for the IMAGES at any time.

**RESPONSE:** Defendant objects to and denies this Request for being impermissibly multi-

part. There are eighteen separate images at question and this Request does not specify which image

is the subject of the Request in a way that permits Defendant to appropriately respond.

**REQUEST FOR ADMISSION NO. 2** 

Admit that YOU authored an article titled "STAR WARS: THE LAST JEDI Actress Laura

Dern Shares New Image Of Vice Admiral Amilyn Holdo" that appeared on the WEBSITE on

October 18, 2017.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 3** 

Admit that the article titled "STAR WARS: THE LAST JEDI Actress Laura Dern Shares

New Image Of Vice Admiral Amilyn Holdo" displayed the Holdo Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a picture matching the description of the Holdo Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 4**

Admit that YOU were authorized by CBM to upload the article titled "STAR WARS: THE LAST JEDI Actress Laura Dern Shares New Image Of Vice Admiral Amilyn Holdo" to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 5**

Admit that YOU were authorized by CBM to display the Holdo Photograph to with the article titled "STAR WARS: THE LAST JEDI Actress Laura Dern Shares New Image Of Vice Admiral Amilyn Holdo" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 6** 

Admit that YOU obtained the Holdo Photograph from the Vanity Fair website.

**RESPONSE:** Denied.

REQUEST FOR ADMISSION NO. 7

Admit that YOU were paid in connection with the article titled "STAR WARS: THE LAST

JEDI Actress Laura Dern Shares New Image Of Vice Admiral Amilyn Holdo."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 8** 

Admit that YOU authored an article titled "STAR WARS: THE LAST JEDI International

TV Spot Features Benicio Del Toro As The Mysterious DJ" that appeared on the WEBSITE on

November 20, 2017.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 9** 

Admit that the article titled "STAR WARS: THE LAST JEDI International TV Spot

Features Benicio Del Toro As The Mysterious DJ" displayed the DJ Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a

picture matching the description of the DJ Photograph (as defined by Plaintiff) was stored. This

caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 10**

Admit that YOU were authorized by CBM to upload the article titled "STAR WARS: THE LAST JEDI International TV Spot Features Benicio Del Toro As The Mysterious DJ" to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

# **REQUEST FOR ADMISSION NO. 11**

Admit that YOU were authorized by CBM to display the DJ Photograph with the article titled "STAR WARS: THE LAST JEDI International TV Spot Features Benicio Del Toro As The Mysterious DJ" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 12**

Admit that YOU obtained the DJ Photograph from the Vanity Fair website.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 13** 

Admit that YOU were paid in connection with the article titled "STAR WARS: THE LAST

JEDI International TV Spot Features Benicio Del Toro As The Mysterious DJ."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 14** 

Admit that YOU authored an article titled "STAR WARS: THE LAST JED's Mark Hamill

Shares A Lovely Tribute To Carrie Fisher One Year After Her Passing" that appeared on the

WEBSITE on December 27, 2017.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 15** 

Admit that the article titled "STAR WARS: THE LAST JED's Mark Hamill Shares A

Lovely Tribute To Carrie Fisher One Year After Her Passing" displayed the Skywalker

Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a

picture matching the description of the Skywalker Photograph (as defined by Plaintiff) was stored.

This caused a version of the image to be viewable from within this article. Deny all other

interpretations and allegations in this Request.

Admit that YOU were authorized by CBM to upload the article titled "STAR WARS: THE

LAST JED's Mark Hamill Shares A Lovely Tribute To Carrie Fisher One Year After Her Passing"

to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 17** 

Admit that YOU were authorized by CBM to display the Skywalker Photograph with the

article titled "STAR WARS: THE LAST JED's Mark Hamill Shares A Lovely Tribute To Carrie

Fisher One Year After Her Passing" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 18** 

Admit that YOU obtained the Skywalker Photograph from the Vanity Fair website.

**RESPONSE:** Deny.

Admit that YOU were paid in connection with the article titled "STAR WARS: THE LAST

JED's Mark Hamill Shares A Lovely Tribute To Carrie Fisher One Year After Her Passing."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 20** 

Admit that YOU authored an article titled "Billie Lourd Shares A Touching Tribute To

Carrie Fisher On The Second Anniversary Of Her Passing" that appeared on the WEBSITE on

December 27, 2018.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 21** 

Admit that the article titled "Billie Lourd Shares A Touching Tribute To Carrie Fisher On

The Second Anniversary Of Her Passing" displayed the Connix Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a

picture matching the description of the Connix Photograph (as defined by Plaintiff) was stored.

This caused a version of the image to be viewable from within this article. Deny all other

interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 22** 

Admit that YOU were authorized by CBM to upload the article titled "Billie Lourd Shares

A Touching Tribute To Carrie Fisher On The Second Anniversary Of Her Passing" to the

WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 23** 

Admit that YOU were authorized by CBM to display the Connix Photograph with the

article titled "Billie Lourd Shares A Touching Tribute To Carrie Fisher On The Second

Anniversary Of Her Passing" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 24** 

Admit that YOU obtained the Connix Photograph from the Vanity Fair website.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 25** 

Admit that YOU were paid in connection with the article titled "Billie Lourd Shares A

Touching Tribute To Carrie Fisher On The Second Anniversary Of Her Passing."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 26** 

Admit that YOU authored an article titled "STAR WARS: THE RISE OF SKYWALKER

Star Daisy Ridley Promises A 'Brilliant End' To The Story" that appeared on the WEBSITE on

June 26, 2019.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 27** 

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER Star Daisy

Ridley Promises A 'Brilliant End' To The Story' displayed the Lightsaber Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a

picture matching the description of the Lightsaber Photograph (as defined by Plaintiff) was stored.

This caused a version of the image to be viewable from within this article. Deny all other

interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 28** 

Admit that YOU were authorized by CBM to upload the article titled "STAR WARS: THE

RISE OF SKYWALKER Star Daisy Ridley Promises A 'Brilliant End' To The Story" to the

WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 29** 

Admit that YOU were authorized by CBM to display the Lightsaber Photograph with the

article titled "STAR WARS: THE RISE OF SKYWALKER Star Daisy Ridley Promises A

'Brilliant End' To The Story" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 30** 

Admit that YOU obtained the Lightsaber Photograph from the Vanity Fair website.

**RESPONSE:** Deny.

Delly.

**REQUEST FOR ADMISSION NO. 31** 

Admit that YOU were paid in connection with the article titled "STAR WARS: THE RISE

OF SKYWALKER Star Daisy Ridley Promises A 'Brilliant End' To The Story."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

Admit that YOU authored an article titled "STAR WARS: THE RISE OF SKYWALKER

- Rey And Kylo Ren Clash On New Empire Magazine Covers" that appeared on the WEBSITE

on September 27, 2019.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 33** 

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER – Rey And

Kylo Ren Clash On New Empire Magazine Covers" displayed the Lightsaber Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a

picture matching the description of the Lightsaber Photograph (as defined by Plaintiff) was stored.

This caused a version of the image to be viewable from within this article. Deny all other

interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 34** 

Admit that YOU were authorized by CBM to upload the article titled "STAR WARS: THE

RISE OF SKYWALKER – Rey And Kylo Ren Clash On New Empire Magazine Covers" to the

WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

Admit that YOU were authorized by CBM to display the Lightsaber Photograph with the article titled "STAR WARS: THE RISE OF SKYWALKER – Rey And Kylo Ren Clash On New Empire Magazine Covers" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 36**

Admit that YOU obtained the Lightsaber Photograph from the Vanity Fair website.

**RESPONSE:** Deny. Defendant also notes and objects to this Request as duplicative of Request for Admission No. 30.

# **REQUEST FOR ADMISSION NO. 37**

Admit that YOU were paid in connection with the article titled "STAR WARS: THE RISE OF SKYWALKER – Rey And Kylo Ren Clash On New Empire Magazine Covers."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's paid contributor program for which he was paid a nominal amount for page views on the website as a whole, pro-rated for views on his content on the website, which would include this article. Deny all other interpretations and allegations in this Request.

Admit that YOU authored an article titled "STAR WARS: THE RISE OF SKYWALKER

Final Trailer Reportedly Scheduled For October 21" that appeared on the WEBSITE on October

10, 2019.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 39** 

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER Final Trailer

Reportedly Scheduled For October 21" displayed the Lightsaber Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a

picture matching the description of the Lightsaber Photograph (as defined by Plaintiff) was stored.

This caused a version of the image to be viewable from within this article. Deny all other

interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 40** 

Admit that YOU were authorized by CBM to upload the article "STAR WARS: THE RISE

OF SKYWALKER Final Trailer Reportedly Scheduled For October 21" to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 41** 

Admit that YOU were authorized by CBM to display the Lightsaber Photograph with the

article titled "STAR WARS: THE RISE OF SKYWALKER Final Trailer Reportedly Scheduled

For October 21" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 42** 

Admit that YOU obtained the Lightsaber Photograph from the Vanity Fair website.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 43** 

Admit that YOU were paid in connection with the article titled "STAR WARS: THE RISE

OF SKYWALKER Final Trailer Reportedly Scheduled For October 21."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 44** 

Admit that YOU authored an article titled "STAR WARS: THE RISE OF SKYWALKER

Remains #1 At The Box Office As It Passes \$900M Worldwide" that appeared on the WEBSITE

on January 5, 2020.

**RESPONSE:** Admit.

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER Remains #1 At The Box Office As It Passes \$900M Worldwide" displayed the Lightsaber Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a picture matching the description of the Lightsaber Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 46**

Admit that YOU were authorized by CBM to upload the article "STAR WARS: THE RISE OF SKYWALKER Remains #1 At The Box Office As It Passes \$900M Worldwide" to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 47**

Admit that YOU were authorized by CBM to display the Lightsaber Photograph with the article titled "STAR WARS: THE RISE OF SKYWALKER Remains #1 At The Box Office As It Passes \$900M Worldwide" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 48** 

Admit that YOU obtained the Lightsaber Photograph from the Vanity Fair website.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 49** 

Admit that YOU were paid in connection with the article titled "STAR WARS: THE RISE

OF SKYWALKER Remains #1 At The Box Office As It Passes \$900M Worldwide."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 50** 

Admit that YOU authored an article titled "STAR WARS: THE RISE OF SKYWALKER

Passes \$500 Million At The Domestic Box Office" that appeared on the WEBSITE on January 26,

2020.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 51** 

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER Passes \$500

Million At The Domestic Box Office" displayed the Lightsaber Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a picture matching the description of the Lightsaber Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 52**

Admit that YOU were authorized by CBM to upload the article "STAR WARS: THE RISE OF SKYWALKER Passes \$500 Million At The Domestic Box Office" to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 53**

Admit that YOU were authorized by CBM to display the Lightsaber Photograph with the article titled ""STAR WARS: THE RISE OF SKYWALKER Passes \$500 Million At The Domestic Box Office" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

Admit that YOU obtained the Lightsaber Photograph from the Vanity Fair website.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 55** 

Admit that YOU were paid in connection with the article titled "STAR WARS: THE RISE

OF SKYWALKER Passes \$500 Million At The Domestic Box Office."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 56** 

Admit that in 2017 YOU had administrative privileges with respect to the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes

"administrative privileges." Admit that Defendant had the ability to post content to the Website

that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to

make minor formatting, spelling, grammar, and syntax revisions to content posted under his

account. Deny all other interpretations or allegations in this Request.

**REQUEST FOR ADMISSION NO. 57** 

Admit that in 2017 YOU had editorial privileges with respect to content appearing on the

WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes

"editorial privileges." Admit that Defendant had the ability to post content to the Website that

complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 58**

Admit that in 2017 YOU had authority from CBM to make editorial decisions with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial decisions." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

# **REQUEST FOR ADMISSION NO. 59**

Admit that in 2018 YOU had administrative privileges with respect to the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "administrative privileges." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 60**

Admit that in 2018 YOU had editorial privileges with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial privileges." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 61**

Admit that in 2018 YOU had authority from CBM to make editorial decisions with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial decisions." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 62**

Admit that in 2019 YOU had administrative privileges with respect to the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "administrative privileges." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 63**

Admit that in 2019 YOU had editorial privileges with respect to content appearing on the

WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial privileges." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 64**

Admit that in 2019 YOU had authority from CBM to make editorial decisions with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial decisions." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 65**

Admit that in 2020 YOU had administrative privileges with respect to the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "administrative privileges," and because it seeks information outside the period in which the articles and images in question were posted. Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

Admit that in 2020 YOU had editorial privileges with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial privileges," and because it seeks information outside the period in which the articles and images in question were posted. Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

# **REQUEST FOR ADMISSION NO. 67**

Admit that in 2020 YOU had authority from CBM to make editorial decisions with respect to content appearing on the WEBSITE.

RESPONSE: Defendant objects to this Request because it is unclear as what constitutes "editorial decisions," and because it seeks information outside the period in which the articles and images in question were posted. Defendant objects to this Request because it is unclear as what constitutes "editorial privileges." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 68**

Admit that the IMAGES displayed in connection with the ARTICLES authored by YOU originated with Vanity Fair.

**RESPONSE:** Defendant is unaware of where the images in question "originated." As such, Defendant lacks information to truthfully admit or deny this request and therefore denies the same.

DATE: October 21, 2022

KIMBALL ANDERSON

/s/ William B. Chadwick
Robert E. Aycock
William B. Chadwick

Attorneys for Defendants ComicBookMovie.com, Nathan Best, Mark Cassidy, and Joshua Wilding

# **CERTIFICATE OF SERVICE**

I certify that on October 21, 2022, I caused a true and correct copy of the foregoing **DEFENDANT MARK CASSIDY'S RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION** to be served via email to the following:

Mathew K. Higbee Ryan E. Carreon HIGBEE & ASSOCIATES 1504 Brookhollow Drive, Suite #112 Santa Ana, CA 92705 mhigbee@higbeeassociates.com rcarreon@higbeeassociates.com

Attorneys for Plaintiff Trunk Archive

/s/ William B. Chadwick

# Exhibit 41

Robert E. Aycock (#8878) William B. Chadwick (#16416) KIMBALL ANDERSON 649 E. South Temple, 2nd Floor Salt Lake City, UT 84102 Phone: (801) 359-3333 robert@kimballanderson.com will@kimballanderson.com

Attorneys for Defendants ComicBookMovie.com, Nathan Best, Mark Cassidy, and Joshua Wilding

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

GREAT BOWERY, d/b/a TRUNK ARCHIVE

Plaintiff,

VS.

BEST LITTLE SITES, d/b/a www.comicbookmovie.com; NATHAN BEST; MARK CASSIDY; JOSHUA WILDING; and DOES 1 through 10.

Defendants.

DEFENDANT JOSHUA WILDING'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION

Case No. 2:21-cv-00567-DBP

District Judge: David Barlow

Magistrate Judge: Jared C. Bennett

Defendant Joshua Wilding ("Defendant"), by and through his undersigned counsel of record, hereby submits his responses to Plaintiff Great Bowery, d/b/a Trunk Archive's ("Plaintiff") First Set of Requests for Admissions pursuant to Fed R. Civ. P. 26 and 36.

#### **GENERAL OBJECTIONS**

1. Defendant objects to Plaintiff's Definitions and Instructions to the extent that they exceed the obligations under Federal Rule of Civil Procedure 26 and/or 36.

2. Defendant objects to the Definitions accompanying these Requests, particularly the

definition for "CBM" as being overbroad, vague, and ambiguous. Plaintiff has stated that "CBM"

"means co-Defendant Best Little Sites, LLC d/b/a www.comicbookmovie.com and any PERSON

acting on its behalf." Whether a person is acting on CBM's behalf is undefined, may be in dispute,

and may call for a legal conclusion.

3. Defendant objects to these Requests to the extent that they seek information

protected by the attorney-client privilege, the work-product doctrine, trial preparation materials,

other material protected under the Federal Rules of Civil Procedure, or any other valid privilege.

4. Defendant reserves the right to supplement or correct these responses as necessary.

REQUESTS FOR ADMISSION

**REQUEST FOR ADMISSION NO. 1** 

Admit the YOU did not purchase a license for the IMAGES at any time.

**RESPONSE:** Defendant objects to and denies this Request for being impermissibly multi-

part. There are eighteen separate images at question and this Request does not specify which image

is the subject of the Request in a way that permits Defendant to appropriately respond.

**REQUEST FOR ADMISSION NO. 2** 

Admit that YOU authored an article titled "STAR WARS: THE RISE OF SKYWALKER

- 12 Biggest Reveals And Spoilers From Vanity Fair's Cover Story" that appeared on the

WEBSITE on May 22, 2019.

RESPONSE: Admit.

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER – 12 Biggest Reveals And Spoilers From Vanity Fair's Cover Story" displayed the Millennium Falcon Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a picture matching the description of the Millennium Falcon Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

# **REQUEST FOR ADMISSION NO. 4**

Admit that YOU caused the Millennium Falcon Photograph to be displayed on the WEBSITE with the article "STAR WARS: THE RISE OF SKYWALKER – 12 Biggest Reveals And Spoilers From Vanity Fair's Cover Story."

**RESPONSE:** Defendant admits that he posted this article which contained code that directed to a server where a picture matching the description of the Millennium Falcon Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 5**

Admit that YOU were authorized by CBM to upload the article titled "STAR WARS: THE RISE OF SKYWALKER – 12 Biggest Reveals And Spoilers From Vanity Fair's Cover Story" to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 6** 

Admit that YOU were authorized by CBM to display the Millennium Falcon Photograph

with the article titled "STAR WARS: THE RISE OF SKYWALKER – 12 Biggest Reveals And

Spoilers From Vanity Fair's Cover Story" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 7** 

Admit that YOU obtained the Millennium Falcon Photograph from the Vanity Fair website.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 8** 

Admit that YOU were paid in connection with the article titled "STAR WARS: THE RISE

OF SKYWALKER – 12 Biggest Reveals And Spoilers From Vanity Fair's Cover Story."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

Admit that YOU authored an article titled "STAR WARS: THE RISE OF SKYWALKER

Behind The Scenes Video Features New Aliens And Cast Interviews" that appeared on the

WEBSITE on May 22, 2019.

RESPONSE: Admit.

**REQUEST FOR ADMISSION NO. 10** 

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER Behind The

Scenes Video Features New Aliens And Cast Interviews" displayed the R2-D2 Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a

picture matching the description of the R2-D2 Photograph (as defined by Plaintiff) was stored.

This caused a version of the image to be viewable from within this article. Deny all other

interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 11** 

Admit that YOU caused the R2-D2 Photograph to be displayed on the WEBSITE with the

article "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New

Aliens And Cast Interviews."

**RESPONSE:** Defendant admits that he posted this article which contained code that

directed to a server where a picture matching the description of the R2-D2 Photograph (as defined

by Plaintiff) was stored. This caused a version of the image to be viewable from within this article.

Deny all other interpretations and allegations in this Request.

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews" displayed the Finn Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a picture matching the description of the Finn Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 13**

Admit that YOU caused the Finn Photograph to be displayed on the WEBSITE with the article "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews."

**RESPONSE:** Defendant admits that he posted this article which contained code that directed to a server where a picture matching the description of the Finn Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 14**

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews" displayed the Hux Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a picture matching the description of the Hux Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

Admit that YOU caused the Hux Photograph to be displayed on the WEBSITE with the article "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews."

**RESPONSE:** Defendant admits that he posted this article which contained code that directed to a server where a picture matching the description of the Hux Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

# **REQUEST FOR ADMISSION NO. 16**

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews" displayed the Production Photographs.

**RESPONSE:** Admit that this article contained code that directed to a server where a picture matching the description of the Production Photographs (as defined by Plaintiff) were stored. This caused a version of the images to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 17**

Admit that YOU caused the Production Photographs to be displayed on the WEBSITE with the article "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews."

**RESPONSE:** Defendant admits that he posted this article which contained code that directed to a server where pictures matching the description of the Production Photographs (as

defined by Plaintiff) were stored. This caused a version of the images to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 18**

Admit that YOU were authorized by CBM to upload the article titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews" to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 19**

Admit that YOU were authorized by CBM to display the R2-D2 Photograph with the article titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

Admit that YOU were authorized by CBM to display the Finn Photograph with the article titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 21**

Admit that YOU were authorized by CBM to display the Hux Photograph with the article titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 22**

Admit that YOU were authorized by CBM to display the Production Photograph with the article titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 23** 

Admit that YOU obtained the R2-D2 Photograph from the Vanity Fair website.

RESPONSE: Denied.

**REQUEST FOR ADMISSION NO. 24** 

Admit that YOU obtained the Finn Photograph from the Vanity Fair website.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 25** 

Admit that YOU obtained the Hux Photograph from the Vanity Fair website.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 26** 

Admit that YOU obtained the Production Photographs from the Vanity Fair website.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 27** 

Admit that YOU were paid in connection with the article titled "STAR WARS: THE RISE

OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

## **REQUEST FOR ADMISSION NO. 28**

Admit that YOU authored an article titled "STAR WARS: THE RISE OF SKYWALKER Has A Very Interesting Alternate Title In Japan" that appeared on the WEBSITE on June 25, 2019.

RESPONSE: Admit.

# **REQUEST FOR ADMISSION NO. 29**

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER Has A Very Interesting Alternate Title In Japan" displayed the Lightsaber Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a picture matching the description of the Lightsaber Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 30**

Admit that YOU caused the Lightsaber Photograph to be displayed on the WEBSITE with the article "STAR WARS: THE RISE OF SKYWALKER Has A Very Interesting Alternate Title In Japan."

**RESPONSE:** Defendant admits that he posted this article which contained code that directed to a server where a picture matching the description of the Lightsaber Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

Admit that YOU were authorized by CBM to upload the article titled "STAR WARS: THE

RISE OF SKYWALKER Has A Very Interesting Alternate Title In Japan" to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 32** 

Admit that YOU were authorized by CBM to display the Lightsaber Photograph with the

article titled "STAR WARS: THE RISE OF SKYWALKER Has A Very Interesting Alternate

Title In Japan" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 33** 

Admit that YOU obtained the Lightsaber Photograph from the Vanity Fair website.

**RESPONSE:** Denied.

Admit that YOU were paid in connection with the article titled "STAR WARS: THE RISE

OF SKYWALKER Has A Very Interesting Alternate Title In Japan."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 35** 

Admit that YOU authored an article titled "STAR WARS: THE RISE OF

SKYWALKER's Runtime Possible [sic] Revealed Along With Some Potential SPOILERS" that

appeared on the WEBSITE on August 12, 2019.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 36** 

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER's Runtime

Possible [sic] Revealed Along With Some Potential SPOILERS" displayed the R2-D2 Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a

picture matching the description of the R2-D2 Photograph (as defined by Plaintiff) was stored.

This caused a version of the image to be viewable from within this article. Deny all other

interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 37** 

Admit that YOU caused the R2-D2 Photograph to be displayed on the WEBSITE with the

article "STAR WARS: THE RISE OF SKYWALKER's Runtime Possible [sic] Revealed Along

With Some Potential SPOILERS."

**RESPONSE:** Defendant admits that he posted this article which contained code that directed to a server where a picture matching the description of the R2-D2 Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 38**

Admit that YOU were authorized by CBM to upload the article titled "STAR WARS: THE RISE OF SKYWALKER's Runtime Possible [sic] Revealed Along With Some Potential 9 SPOILERS" to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 39**

Admit that YOU were authorized by CBM to display the R2-D2 Photograph with the article titled "STAR WARS: THE RISE OF SKYWALKER's Runtime Possible [sic] Revealed Along With Some Potential SPOILERS" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 40** 

Admit that YOU obtained the R2-D2 Photograph from the Vanity Fair website.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 41** 

Admit that YOU were paid in connection with the article titled "STAR WARS: THE RISE

OF SKYWALKER's Runtime Possible [sic] Revealed Along With Some Potential SPOILERS."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 42** 

Admit that YOU authored an article titled "STAR WARS: THE RISE OF

SKYWALKER's Oscar Issacs Blames 'Disney Overlords' For No Poe/Finn Romance" that

appeared on the WEBSITE on December 26, 2019.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 43** 

Admit that the article titled "STAR WARS: THE RISE OF SKYWALKER's Oscar Issacs

Blames 'Disney Overlords' For No Poe/Finn Romance" displayed the Dameron Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a

picture matching the description of the Dameron Photograph (as defined by Plaintiff) was stored.

This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 44**

Admit that YOU caused the Dameron Photograph to be displayed on the WEBSITE with the article "STAR WARS: THE RISE OF SKYWALKER's Oscar Issacs Blames 'Disney Overlords' For No Poe/Finn Romance."

**RESPONSE:** Defendant admits that he posted this article which contained code that directed to a server where a picture matching the description of the Dameron Photograph (as defined by Plaintiff) was stored. This caused a version of the image to be viewable from within this article. Deny all other interpretations and allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 45**

Admit that YOU were authorized by CBM to upload the article titled "STAR WARS: THE RISE OF SKYWALKER's Oscar Issacs Blames 'Disney Overlords' For No Poe/Finn Romance" to the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article referenced in this Request complied with CBM's policies, guidelines, and procedures, but recognizes that this is a subject of the current litigation. Deny all other interpretations and allegations in this Request.

Admit that YOU were authorized by CBM to display the Dameron Photograph with the

article titled "STAR WARS: THE RISE OF SKYWALKER's Oscar Issaes Blames 'Disney

Overlords' For No Poe/Finn Romance" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 47** 

Admit that YOU obtained the Dameron Photograph from the Vanity Fair website.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 48** 

Admit that YOU were paid in connection with the article titled "STAR WARS: THE RISE

OF SKYWALKER's Oscar Issacs Blames 'Disney Overlords' For No Poe/Finn Romance."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's

paid contributor program for which he was paid a nominal amount for page views on the website

as a whole, pro-rated for views on his content on the website, which would include this article.

Deny all other interpretations and allegations in this Request.

Admit that YOU authored an article titled "Luke Skywalker's Big STAR WARS: THE

RISE OF SKYWALKER Scene Was The Result Of Reshoots" that appeared on the WEBSITE on

January 7, 2020.

RESPONSE: Admit.

**REQUEST FOR ADMISSION NO. 50** 

Admit that the article titled "Luke Skywalker's Big STAR WARS: THE RISE OF

SKYWALKER Scene Was The Result Of Reshoots" displayed the R2-D2 Photograph.

**RESPONSE:** Admit that this article contained code that directed to a server where a

picture matching the description of the R2-D2 Photograph (as defined by Plaintiff) was stored.

This caused a version of the image to be viewable from within this article. Deny all other

interpretations and allegations in this Request.

**REQUEST FOR ADMISSION NO. 51** 

Admit that YOU caused the R2-D2 Photograph to be displayed on the WEBSITE with the

article "Luke Skywalker's Big STAR WARS: THE RISE OF SKYWALKER Scene Was The

Result Of Reshoots."

**RESPONSE:** Defendant admits that he posted this article which contained code that

directed to a server where a picture matching the description of the R2-D2 Photograph (as defined

by Plaintiff) was stored. This caused a version of the image to be viewable from within this article.

Deny all other interpretations and allegations in this Request.

Admit that YOU were authorized by CBM to upload the article titled "Luke Skywalker's

Big STAR WARS: THE RISE OF SKYWALKER Scene Was The Result Of Reshoots" to the

WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 53** 

Admit that YOU were authorized by CBM to display the R2-D2 Photograph with the article

titled "Luke Skywalker's Big STAR WARS: THE RISE OF SKYWALKER Scene Was The

Result Of Reshoots" on the WEBSITE.

**RESPONSE:** Admit that Defendant was authorized to upload content that complied with

CBM's policies, guidelines, and procedures. Defendant contends that the upload of the article

referenced in this Request complied with CBM's policies, guidelines, and procedures, but

recognizes that this is a subject of the current litigation. Deny all other interpretations and

allegations in this Request.

**REQUEST FOR ADMISSION NO. 54** 

Admit that YOU obtained the R2-D2 Photograph from the Vanity Fair website.

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**RESPONSE:** Denied.

Admit that YOU were paid in connection with the article titled "Luke Skywalker's Big STAR WARS: THE RISE OF SKYWALKER Scene Was The Result Of Reshoots."

**RESPONSE:** Defendant admits that when this article was posted, he was part of CBM's paid contributor program for which he was paid a nominal amount for page views on the website as a whole, pro-rated for views on his content on the website, which would include this article. Deny all other interpretations and allegations in this Request.

## **REQUEST FOR ADMISSION NO. 56**

Admit that in 2017 YOU had administrative privileges with respect to the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "administrative privileges." that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 57**

Admit that in 2017 YOU had editorial privileges with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial privileges." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

Admit that in 2017 YOU had authority from CBM to make editorial decisions with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial decisions." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

# **REQUEST FOR ADMISSION NO. 59**

Admit that in 2018 YOU had administrative privileges with respect to the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "administrative privileges." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 60**

Admit that in 2018 YOU had editorial privileges with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial privileges." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to

make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 61**

Admit that in 2018 YOU had authority from CBM to make editorial decisions with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial decisions." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 62**

Admit that in 2019 YOU had administrative privileges with respect to the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "administrative privileges." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 63**

Admit that in 2019 YOU had editorial privileges with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial privileges." Admit that Defendant had the ability to post content to the Website that

complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 64**

Admit that in 2019 YOU had authority from CBM to make editorial decisions with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "editorial privileges." Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

# **REQUEST FOR ADMISSION NO. 65**

Admit that in 2020 YOU had administrative privileges with respect to the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes "administrative privileges," and because it seeks information outside the period in which the articles and images in question were posted. Admit that Defendant had the ability to post content to the Website that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to make minor formatting, spelling, grammar, and syntax revisions to content posted under his account. Deny all other interpretations or allegations in this Request.

#### **REQUEST FOR ADMISSION NO. 66**

Admit that in 2020 YOU had editorial privileges with respect to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes

"editorial privileges," and because it seeks information outside the period in which the articles and

images in question were posted. Admit that Defendant had the ability to post content to the Website

that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to

make minor formatting, spelling, grammar, and syntax revisions to content posted under his

account. Deny all other interpretations or allegations in this Request.

**REQUEST FOR ADMISSION NO. 67** 

Admit that in 2020 YOU had authority from CBM to make editorial decisions with respect

to content appearing on the WEBSITE.

**RESPONSE:** Defendant objects to this Request because it is unclear as what constitutes

"editorial decisions," and because it seeks information outside the period in which the articles and

images in question were posted. Admit that Defendant had the ability to post content to the Website

that complied with CBM's policies, guidelines, and terms. Admit that Defendant had the ability to

make minor formatting, spelling, grammar, and syntax revisions to content posted under his

account. Deny all other interpretations or allegations in this Request.

**REQUEST FOR ADMISSION NO. 68** 

Admit that the IMAGES displayed in connection with the ARTICLES authored by YOU

originated with Vanity Fair.

**RESPONSE:** Defendant is unaware of where the images in question "originated." As such,

Defendant lacks information to truthfully admit or deny this request and therefore denies the same.

DATE: October 21, 2022

KIMBALL ANDERSON

/s/ William B. Chadwick
Robert E. Aycock
William B. Chadwick

Attorneys for Defendants ComicBookMovie.com, Nathan Best, Mark Cassidy, and Joshua Wilding

# **CERTIFICATE OF SERVICE**

I certify that on October 21, 2022, I caused a true and correct copy of the foregoing **DEFENDANT JOSHUA WILDING'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS** to be served via email to the following:

Mathew K. Higbee
Ryan E. Carreon
HIGBEE & ASSOCIATES
1504 Brookhollow Drive, Suite #112
Santa Ana, CA 92705
mhigbee@higbeeassociates.com
rcarreon@higbeeassociates.com

Attorneys for Plaintiff Trunk Archive

/s/ William B. Chadwick

# Exhibit 42

Mathew K. Higbee, SBN 11133 Ryan E. Carreon, *Pro Hac Vice* **HIGBEE & ASSOCIATES**1504 Brookhollow Drive, Suite #112
Santa Ana, CA 92705
(714) 617-8373
<a href="mailto:mhigbee@higbee.law">mhigbee@higbee.law</a>
rearreon@higbee.law
Attorneys for Plaintiff Trunk Archive

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

GREAT BOWERY, d/b/a TRUNK ARCHIVE,

Plaintiff,

v.

BEST LITTLE SITES, d/b/a www.comicbookmovie.com; NATHAN BEST; MARK CASSIDY; JOSHUA WILDING; and DOES 1 through 10, inclusive,

Defendants.

Case No. 2:21-cv-00567-DBB

**DECLARATION OF ANNIE LEIBOVITZ** 

#### **DECLARATION OF ANNIE LEIBOVITZ**

## I, Annie Leibovitz, declare as follows:

- 1. I am over the age of 18 years old. I have personal knowledge of all matters stated herein, and if called as a witness, I could and would competently testify thereto.
  - 2. I have been a professional photographer for over 40 years.
- 3. Between 2014 and 2019, I created a series of photographs of the cast and crew of Star Wars: The Last Jedi and Star Wars: The Rise of Skywalker.
- 4. Specifically, I created a photograph of actress Laura Dern as Vice Admiral Amilyn Holdo ("Holdo Photograph"), a true and correct copy of which is submitted herewith as Exhibit 1.
- 5. I also created a photograph of actor Benicio Del Toro as DJ ("DJ Photograph"), a true and correct copy of which is submitted herewith as Exhibit 2.
- 6. I also created a photograph of actors Mark Hamil and Carrie Fisher as Luke Skywalker and Leia Organa ("Skywalker Photograph"), a true and correct copy of which is submitted herewith as Exhibit 3.
- 7. I also created a photograph of actress Carrie Fisher and her daughter Billie Lourd as Leia Organa and Kaydel Ko Connix ("Connix Photograph"), a true and correct copy of which is submitted herewith as Exhibit 4.
- 8. I also created a photograph of actors Oscar Isaacs, and Billy Dee Williams as Poe Dameron and Lando Calrissian aboard the Millennium Falcon with Chewbacca and BB-8 ("Millennium Falcon Photograph"), a true and correct copy of which is submitted herewith as Exhibit 5.
- 9. I also created a photograph of actor Mark Hamil as Luke Skywalker with R2-D2 ("R2-D2 Photograph"), a true and correct copy of which is submitted herewith as Exhibit 6.
- 10. I also created a photograph of actors John Boyega and Naomi Ackle as Finn and Jannah ("Finn Photograph"), a true and correct copy of which is submitted herewith as Exhibit 7.
  - 11. I also created a photograph of actors Domhnall Gleeson and Richard E. Grant as

General Hux and Allegiant General Pryde; ("Hux Photograph"), a true and correct copy of which is submitted herewith as Exhibit 8.

- 12. I also created eight photographs of behind-the-scenes production of Star Wars: The Rise of Skywalker ("Production Photographs"), true and correct copies of which are submitted herewith as Exhibit 9.
- 13. I also created a photograph of actors Adam Driver and Daisy Ridley as Kylo Ren and Rey ("Lightsaber Photograph"), a true and correct copy of which is submitted herewith as Exhibit 10.
- 14. I also created a photograph of actors Oscar Issacs and John Boyega as Poe Dameron and Finn ("Dameron Photograph"), a true and correct copy of which is submitted herewith as Exhibit 11.
  - 15. These 18 photographs will be collectively referred to as the Star Wars Photographs.
  - 16. I registered the Star Wars Photographs with the United States Copyright Office.
- 17. I registered the Holdo Photograph, Skywalker Photograph, Connix Photograph, DJ, Photograph, and Dameron Photograph as part of a group registration of photographs under registration certificate VA 2-111-252 with an effective registration date of July 10, 2017.
- 18. A true and correct copy of registration VA 2-111-252 is submitted herewith as Exhibit 12.
- 19. I registered the Millennium Falcon Photograph, R2-D2 Photograph, Finn Photograph, Hux Photograph, Production Photographs, and Lightsaber Photograph as part of a group registration of photographs under registration certificate VA 2-192-380 with an effective registration date of January 16, 2020.
- 20. A true and correct copy of registration VA 2-192-380 is submitted herewith as Exhibit 13.
- 21. On or about November 12, 2014, I entered into an agreement ("Artist Agreement") with Plaintiff Great Bowery, Inc. d/b/a Trunk Archive for exclusive worldwide representation to

license my photographs.

- 22. A true and correct copy of the Artist Agreement is submitted herewith as Exhibit 14.
- 23. The Artist Agreement was signed by my agent and manager, Karen Mulligan, with my authorization.
- 24. On or about May 24, 2017, the publication Vanity Fair published an article titled "See Annie Leibovitz's Exclusive Cast Portraits of *Star Wars: The Last Jedi* for *Vanity Fair*" ("2017 Vanity Fair Article").
- 25. A true and correct copy of the 2017 Vanity Fair Article is submitted herewith as Exhibit 15.
- 26. The Holdo, DJ, Skywalker, Connix, and Dameron Photographs were first published in the 2017 Vanity Fair Article as an exclusive as part of an agreement that I have with Vanity Fair's publisher Condé Nast.
- 27. After publication, I provided the Holdo, DJ, Skywalker, Connix, and Dameron Photographs to Trunk Archive under the terms of the Artist Agreement so that Trunk Archive could be the exclusive licensor of these Photographs for any other publications that wished to license them.
- 28. On or about May 22, 2019, the publication Vanity Fair published an article titled "Star Wars: The Rise of Skywalker Photos: Meet the Characters and Go on Set" ("2019 Vanity Fair Article").
- 29. A true and correct copy of the 2019 Vanity Fair Article is submitted herewith as Exhibit 16.
- 30. The Millennium Falcon, R2-D2, Finn, Hux, Production, and Lightsaber Photographs were first published in the 2019 Vanity Fair Article as an exclusive as part of an agreement that I have with Vanity Fair's publisher Condé Nast.
  - 31. After publication, I provided the Millennium Falcon, R2-D2, Finn, Hux,

Production, and Lightsaber Photographs to Trunk Archive under the terms of the Artist Agreement so that Trunk Archive could be the exclusive licensor of these Photographs for any other publications that wished to license them.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the United States of America.

Executed this October 31, 2023 at New York, New York.

Annie Leibovitz

# Exhibit 43

Mathew K. Higbee, SBN 11133
HIGBEE & ASSOCIATES
1504 Brookhollow Drive, Suite #112
Santa Ana, CA 92705
(714) 617-8373
mhigbee@higbeeassociates.com
Attorneys for Plaintiff Trunk Archive

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

GREAT BOWERY, d/b/a TRUNK ARCHIVE,

Plaintiff,

Case No. 2:21-cv-00567-DBP

**COMPLAINT** 

V.

BEST LITTLE SITES, d/b/a
www.comicbookmovie.com; NATHAN
BEST; MARK CASSIDY; JOSHUA
WILDING; and DOES 1 through 10, inclusive
Defendants.

Plaintiff Great Bowery, Inc., d/b/a Trunk Archive ("Trunk Archive") states its claim against Defendants Best Little Sites d/b/a <a href="www.comicbookmovie.com">www.comicbookmovie.com</a>("CBM"), Joshua Wilding ("Wilding") and Mark Cassidy ("Cassidy") (collectively "Defendants") as follows:

#### **PARTIES**

1. Plaintiff Great Bowery, Inc. d/b/a Trunk Archive is a Delaware corporation duly organized by law, having a place of business at 190 Bowery New York, NY 10012.

- 2. Defendant Best Little Sites, LLC d/b/a/ <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> ("CBM"), is a Utah limited liability company duly organized and existing under the laws of Utah, with a principal place of business at 639 E 720 N, Lindon, UT 84042.
- 3. Defendant Nathan Best is an individual that, on information and belief, resides at 237 E. Lake View Drive, Vineyard, Utah, 84059.
- 4. Defendant Mark Cassidy is an individual that, on information and belief resides in Dublin, Ireland.
- 5. Defendant Joshua Wilding is an individual that, on information and belief resides in Defendant Joshua Wilding is an individual that, on information and belief resides in Taunton, Somerset, England.
- 6. Trunk Archive is unaware of the true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, sues such Defendants under such fictitious names. Trunk Archive is informed and believes and on that basis alleges that such fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Trunk Archive's damages as herein alleged were proximately caused by the conduct of said Defendants. Trunk Archive will seek to amend the complaint when the names and capacities of such fictitiously named Defendants are ascertained. As alleged herein, "Defendant" shall mean all named Defendants and all fictitiously named Defendants.

#### JURISDICTION AND VENUE

- 7. The Court has jurisdiction under the Federal question pursuant to 28 U.S.C. §1331, concerning actions relating to copyright, 28 U.S.C. § 1338(a), and under diversity jurisdiction pursuant to 28. U.S.C. § 1332 as the parties are diverse in citizenship.
  - 8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
- 9. This Court has personal jurisdiction over Defendants because Defendants conducts business in the state of Utah and the acts of infringement alleged in this complaint occurred in state of Utah and were directed towards the state of Utah

- 10. Specifically, Trunk Archive's copyright infringement claims arise out of Defendant CBM's relationship with Defendant Best, Cassidy and Wilding.
- 11. Venue is proper because a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this Judicial District.

#### FACTUAL BACKGROUND

#### **Trunk Archive**

- 12. Trunk Archive is a full-service photography licensing agency representing some of the most prominent photographers and iconic images in the world.
- 13. Trunk Archive's catalogue features imagery from hundreds of prominent artists and designers that are available for license.
- 14. One of Trunk Archive's most prominent American portrait photographer Annie Leibovitz.
- 15. Leibovitz is one of the world's best known and most accomplished portrait photographers. She is primarily known for her celebrity portraiture, with her work has been featured on numerous album covers and magazines.
- 16. Her work has also been exhibited in prominent galleries and museums, including the Smithsonian Institute's National Portrait Gallery in Washington, DC.
- 17. Between 2014 and 2019, Leibovitz took a series of photographs of the cast and crew of *Star Wars: The Last Jedi* and *Star Wars: The Rise of Skywalker*.
- Amilyn Holdo ("Holdo Photograph"); a photograph of actor Benicio Del Toro as DJ ("DJ Photograph"); a photograph of actors Mark Hamil and Carrie Fisher as Luke Skywalker and Leia Organa ("Skywalker Photograph"); a photograph of actress Carrie Fisher and her daughter Billie Lourd as Leia Organa and Kaydel Ko Connix ("Connix Photograph"); a photograph of actors Oscar Isaacs, and Billy Dee Williams as Poe Dameron and Lando Calrissian aboard the Millennium Falcon with Chewbacca and BB-8 ("Millennium Falcon Photograph"); a photograph

of actor Mark Hamil as Luke Skywalker with R2-D2 ("R2-D2 Photograph"); a photograph of actors John Boyega and Naomi Ackle as Finn and Jannah ("Finn Photograph"), a photograph of actors Domhnall Gleeson and Richard E. Grant as General Hux and Allegiant General Pryde; ("Hux Photograph"); eight photographs of behind the scenes production of *Star Wars: The Rise of Skywalker* ("Production Photographs"); a photograph of actors Adam Driver and Daisy Ridley as Kylo Ren and Rey ("Lightsaber Photograph"); and a photograph of actors Oscar Issacs and John Boyega as Poe Dameron and Finn ("Dameron Photograph").

- 19. Collectively these will be referred to as the Star Wars Photographs.
- 20. Attached hereto as Exhibit A are true and correct copies the eighteen (18) Star Wars Photographs at issue in this case.
- 21. The Star Wars Photographs were originally published exclusively by the publication *Vanity Fair* in print and online at the *Vanity Fair* website. *See* https://bit.ly/2YWOwW7 and https://bit.ly/3CnQI7z
- 22. Leibovitz registered the Star Wars Photographs with the United States Copyright Office.
- 23. Specifically, Leibovitz registered the Holdo Photograph, Skywalker Photograph, Connix Photograph, and Dameron Photograph under registration certificate VA 2-111-252 with an effective registration date of July 10, 2017; Leibovitz registered the DJ photograph under registration certificate VA 2-056-929 with an effective registration date of October 17, 2016; Leibovitz registered the Millennium Falcon Photograph, R2-D2 Photograph, Finn Photograph, Hux Photograph, and Production Photographs, Lightsaber Photograph and Dameron Photograph under registration certificate VA 2-192-380 with an effective registration date of January 16, 2020.
- 24. Leibovitz subsequently granted Trunk Archive the exclusive right to license the Star Wars Photographs.

#### www.ComicBookMovie.com

- 25. Defendant CBM owns and operates the website <a href="www.comicbookmovie.com">www.comicbookmovie.com</a> (the "Website").
  - 26. Defendant Best is the owner and President of CBM.
- 27. CBM's Website consists primarily of movie and television articles and related editorial content geared towards the comic book, graphic novel, sci-fi, fantasy, and horror genres.
  - 28. Content on CBM's Website is monetized through paid advertisements.
- 29. Attached hereto as Exhibit B is a true and correct copy of the page on the CBM Website https://www.comicbookmovie.com/about/advertise/.
- 30. On information and belief, Defendant Best has the ability to supervise and control the content on the Website and receives a financial benefit from the operation of the Website.
- 31. CBM actively solicits paid contributors to generate, edit, and moderate content for the CBM Website.
- 32. According to the CBM Website, paid contributors are expected to meet a minimum article count "based upon your desired shift (typically one per day), that you will be required to meet to maintain editorship and payment eligibility."
- 33. Paid contributors are compensated each month and are eligible for bonus and other incentives based on the content they create to CBM's Website.
- 34. Attached hereto as Exhibit C is a true and correct copy of the page on the CBM Website <a href="https://www.comicbookmovie.com/about/contribute/">https://www.comicbookmovie.com/about/contribute/</a>.
- 35. Defendants Wilding and Cassidy are listed prominently on the "About" page of the CBM website as two of the Website's four "Top Contributors."
- 36. Attached hereto as Exhibit D is a true and correct copy of the page on the CBM Website <a href="https://www.comicbookmovie.com/about/">https://www.comicbookmovie.com/about/</a>.
- 37. On information and belied, Defendants Cassidy and Wilding are paid contributors of CBM.

#### **Defendant Mark Cassidy**

- 38. Defendant Cassidy's profile on the CBM Website states that he has been a member of the Website since November 9, 2008 and states that he has contributed nearly 16,000 posts to the CBM Website, or an average of approximately 3.4 post per day.
- 39. According to his profile on the Website, Cassidy posts to the Website under the username "RorMachine."
- 40. Attached hereto as Exhibit E is a true and correct copy of the page on the CBM Website https://www.comicbookmovie.com/user/RorMachine.
  - 41. Cassidy lists himself on his LinkedIn Profile as "Head Editor" of the Website.
- 42. Attached hereto as Exhibit F is a true and correct copy of Cassidy's LinkedIn page.
  - 43. On information and belief Cassidy is a paid editor/contributor to the Website.
- 44. On information and belief Cassidy is expressly authorized by CBM to create and edit content for the Website.
- 45. In a post to his Twitter account on October 2, 2014, Cassidy stated "Once again: If something isn't written up by a CBM editor and posted out on our main page, it is not endorsed by us."
- 46. Attached hereto as Exhibit G is a true and correct copy of Cassidy's October 2, 2014 tweet.

#### **Defendant Joshua Wilding**

- 47. Defendant Wilding's profile on the CBM Website states that he has been a member of the Website since March 13, 2009 and states that he has contributed over 27,000 posts to the CBM Website, or an average of almost 6 posts per day.
- 48. According to his profile on the Website, Wilding posts to the Website under the username "JoshWilding."

- 49. Attached hereto as Exhibit H is a true and correct copy of the page on the CBM Website https://www.comicbookmovie.com/user/JoshWilding.
  - 50. Wilding lists himself on his Twitter Profile as "Head writer" of the Website.
  - 51. Attached hereto as Exhibit I is a true and correct copy of Wilding's Twitter page.
- 52. Additionally, on his personal website, Wilding states that during his time with the CBM Website "I've helped manage the Twitter, Facebook, and Instagram accounts (growing their followers by thousands of users) and have used Google Analytics to track pageviews in order to best establish how to increase traffic to the website. That resulted in the articles I published receiving over 174 million pageviews in 2019."
- 53. Attached hereto as Exhibit J is a true and correct copy of the "About Me" page on the website https://www.josh-wilding.com/about-me.
  - 54. On information and belief Wilding is a paid editor/contributor to the Website.
- 55. On information and belief Wilding is expressly authorized by CBM to create and edit content for the Website.
- 56. On information and belief, content created by Cassidy, Wilding, and other paid/contributors is created on behalf of and endorsed by CBM.

#### **Defendants' Infringing Conduct**

- 57. In February 2019, Trunk Archive began to discover a number of articles on the CBM website that displayed unlicensed copies of the Star Wars Photographs.
- 58. The Website contained an article authored by Cassidy titled "STAR WARS: THE LAST JEDI Actress Laura Dern Shares New Image Of Vice Admiral Amilyn Holdo" dated October 18, 2017, which displayed the Holdo Photograph.
- 59. The Website contained an article authored by Cassidy titled "STAR WARS: THE LAST JEDI International TV Spot Features Benicio Del Toro As The Mysterious DJ" dated November 20, 2017, which displayed the DJ Photograph.

- 60. The Website contained an article authored by Cassidy titled "STAR WARS: THE LAST JED's Mark Hamill Shares A Lovely Tribute To Carrie Fisher One Year After Her Passing" dated December 27, 2017, which displayed the Skywalker Photograph.
- 61. The Website contained an article authored by Cassidy titled "Billie Lourd Shares A Touching Tribute To Carrie Fisher On The Second Anniversary Of Her Passing" dated December 27, 2018, which displayed the Connix Photograph.
- 62. The Website contained an article authored by Wilding titled "STAR WARS: THE RISE OF SKYWALKER 12 Biggest Reveals And Spoilers From Vanity Fair's Cover Story" dated May 22, 2019, which displayed the Millennium Falcon Photograph.
- 63. The Website contained an article authored by Wilding titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews" dated May 22, 2019, which displayed the R2-D2 Photograph, Finn Photograph, Hux Photograph, and Production Photographs.
- 64. The Website contained an article authored by Wilding titled "STAR WARS: THE RISE OF SKYWALKER Has A Very Interesting Alternate Title In Japan" dated June 25, 2019, which displayed the Lightsaber Photograph.
- 65. The Website contained an article authored by Cassidy titled "STAR WARS: THE RISE OF SKYWALKER Star Daisy Ridley Promises A 'Brilliant End' To The Story" dated June 26, 2019, which displayed the Lightsaber Photograph.
- 66. The Website contained an article authored by Wilding titled "STAR WARS: THE RISE OF SKYWALKER's Runtime Possible [sic] Revealed Along With Some Potential SPOILERS" dated August 12, 2019, which displayed the R2-D2 Photograph.
- 67. The Website contained an article authored by Cassidy titled "STAR WARS: THE RISE OF SKYWALKER Rey And Kylo Ren Clash On New Empire Magazine Covers" dated September 27, 2019, which displayed the Lightsaber Photograph.

- 68. The Website contained an article authored by Cassidy titled "STAR WARS: THE RISE OF SKYWALKER Final Trailer Reportedly Scheduled For October 21" dated October 10, 2019, which displayed the Lightsaber Photograph.
- 69. The Website contained an article authored by Wilding titled "STAR WARS: THE RISE OF SKYWALKER's Oscar Issacs Blames 'Dinsey Overlords' For No Poe/Finn Romance" dated December 26, 2019, which displayed the Dameron Photograph.
- 70. The Website contained an article authored by Cassidy titled "STAR WARS: THE RISE OF SKYWALKER Remains #1 At The Box Office As It Passes \$900M Worldwide" dated January 5, 2020, which displayed the Lightsaber Photograph.
- 71. The Website contained an article authored by Wilding titled "Luke Skywalker's Big STAR WARS: THE RISE OF SKYWALKER Scene Was The Result Of Reshoots" dated January 7, 2020, which displayed the R2-D2 Photograph.
- 72. The Website contained an article authored by Cassidy titled "STAR WARS: THE RISE OF SKYWALKER Passes \$500 Million At The Domestic Box Office" dated January 26, 2020, which displayed the Lightsaber Photograph.
  - 73. Collectively, these will be known as the Infringing Articles
  - 74. Attached hereto as Exhibit K are true and correct copies of the Infringing Articles.
- 75. On information and belief, CBM monetized the Infringing Articles and received advertising revenue from visitors to the Website who viewed the Infringing Articles.
- 76. On information and belief, Cassidy and Wilding were paid by CBM to create the Infringing Articles.

#### FIRST CAUSE OF ACTION COPYRIGHT INFRINGEMENT 17 U.S.C. § 101 et seq.

77. Trunk Archive incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

- 78. Trunk Archive holds the exclusive right to license the Star Wars Photographs, which are original works of authorship subject to copyright protection under the laws of the United States.
- 79. The Star Wars Photographs have been registered with the United States Copyright Office and perfected registration certificates have been issued.
- 80. Defendants have directly, vicariously, contributorily and/or by inducement willfully infringed the copyrights to the Star Wars Photographs by causing them to be displayed as part of the Infringing Article on the Website without authorization in violation of 17 U.S.C. § 501 *et seq.*
- 81. All Defendants' acts were performed without Trunk Archives' permission, license, or consent.
- 82. As a result of Defendants' violations of Title 17 of the U.S. Code, Trunk Archive is entitled to recover damages in the form of any actual damages and disgorgement of profits pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to \$150,000.00 per infringement pursuant to 17 U.S.C. § 504(c).
- 83. As a result of Defendants violations of Title 17 of the U.S. Code, the court in its discretion may allow Trunk Archive the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendants.
- 84. The said wrongful acts of Defendants have caused, and are causing, great injury to Trunk Archive, which damage cannot be accurately computed, and unless this Court restrains Defendants from further commission of said acts, it will suffer irreparable injury, for all of which it is without an adequate remedy at law.
- 85. Accordingly, Trunk Archive seeks a declaration that Defendants are infringing the copyrights to the Star Wars Photographs and an order under 17 U.S.C. § 502 enjoining Defendants from any further infringement of the copyrights to the Star Wars Photographs.

///

#### PRAYER FOR RELIEF

WHEREFORE, Trunk Archive requests judgment against Defendants as follows:

- 1. Defendants and their officers, agents, servants, employees, and representatives, and all persons in active concert or participation with Defendants be permanently enjoined from copying, reproducing, displaying, promoting, advertising, distributing, or selling, or any other form of dealing or transaction in, any and all copyrights owned or managed by Trunk Archive;
- 2. An accounting be made for all profits, income, receipts or other benefit derived by Defendants from the unlawful reproduction, copying, display, promotion, distribution, or sale of products and services, or other media, either now known or hereafter devised, that improperly or unlawfully infringed the Star Wars Photographs pursuant to 17 U.S.C. §§ 504 (a)(1) & (b);
- 3. Actual damages and disgorgement of all profits derived by Defendants from their acts of copyright infringement to reimburse Trunk Archive for all damages suffered by it by reasons of Defendants acts, under 17 U.S.C. §§ 504 (a)(1), or in the alternative and at Trunk Archives' election, statutory damages for copyright infringement, including willful infringement, in accordance with 17 U.S.C. §§ 504(a)(2) and (c);
- 4. Reasonable attorneys' fees incurred herein pursuant to 17 U.S.C. § 505 or otherwise available by law;
- 5. Costs and interest pursuant to 17 U.S.C. §§ 504 (a)(1) and (b), 17 U.S.C. § 505, or otherwise available by law;
  - 6. Prejudgment interest to Trunk Archive on all amounts owed; and
  - 7. Any such other and further relief as the Court may deem just and appropriate.

Dated: September 27, 2021 Respectfully submitted,

/s/ Mathew K. Higbee
Mathew K. Higbee, SBN 11133
HIGBEE & ASSOCIATES
1504 Brookhollow Drive, Suite #112
Santa Ana, CA 92705
(714) 617-8336
mhigbee@higbeeassociates.com
Attorneys for Plaintiff Trunk Archive

#### **DEMAND FOR JURY TRIAL**

Defendant and Counterclaim Plaintiff, Great Bowery, Inc., d/b/a Trunk Archive hereby demands a jury trial in the above matter.

Dated: September 27, 2021 Respectfully submitted,

/s/ Mathew K. Higbee
Mathew K. Higbee, SBN 11133
HIGBEE & ASSOCIATES
1504 Brookhollow Drive, Suite #112
Santa Ana, CA 92705
(714) 617-8373
mhigbee@higbeeassociates.com
Attorneys for Plaintiff Trunk Archive

# Exhibit 44

Robert E. Aycock (#8878) William B. Chadwick (#16416) KIMBALL ANDERSON 649 E. South Temple, 2nd Floor Salt Lake City, UT 84102 Phone: (801) 359-3333 robert@kimballanderson.com will@kimballanderson.com

Attorneys for Defendants
ComicBookMovie.com and Nathan Best

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

GREAT BOWERY, d/b/a TRUNK ARCHIVE

Plaintiff,

VS.

BEST LITTLE SITES, d/b/a www.comicbookmovie.com; NATHAN BEST; MARK CASSIDY; JOSHUA WILDING; and DOES 1 through 10.

Defendants.

#### **ANSWER & COUNTERCLAIM**

Case No. 2:21-cv-00567-DBP

District Judge: David Barlow

Magistrate Judge: Jared C. Bennett

Defendant Best Little Sites, d/b/a www.comicbookmovie.com ("CBM") and Defendant Nathan Best ("Best") (collectively, "Defendants") answer the Complaint filed by Plaintiff Great Bowery, d/b/a Trunk Archive ("Plaintiff" or "Trunk Archive") as follows:

#### **PARTIES**

1. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.

- 2. Deny.
- 3. Admit.
- 4. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 5. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 6. This paragraph does not require a response. To the extent a response is required, Defendants deny the allegations in this paragraph.

#### **JURISDICTION AND VENUE**

- 7. Deny.
- 8. Deny.
- 9. Deny.
- 10. Deny.
- 11. Deny.

#### **BACKGROUND**

#### **Trunk Archive**

- 12. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 13. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 14. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.

- 15. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 16. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 17. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 18. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 19. This paragraph does not require a response. To the extent a response is required, Defendants deny the allegations in this paragraph.
- 20. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 21. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 22. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 23. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 24. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.

#### www.ComicBookMovie.com

#### 25. Admit.

- Admit.
- Admit.
- 28. CBM receives compensation through advertisements on some of its pages.
- 29. Admit that the Exhibit B attached to the Complaint appears to be a true and correct copy of the page at one point accessible at <a href="https://www.comicbookmovie.com/about/advertise/">https://www.comicbookmovie.com/about/advertise/</a>. Deny the rest.
  - 30. Deny.
  - 31. Deny.
  - 32. Admit that CBM's website includes the quoted language. Deny the rest.
  - 33. Admit.
- 34. Admit that the Exhibit C attached to the Complaint appears to be a true and correct copy of the page at one point accessible at <a href="https://www.comicbookmovie.com/about/contribute/">https://www.comicbookmovie.com/about/contribute/</a>. Deny the rest.
- 35. Admit that Defendants Wilding and Cassidy are listed under the "Top Contributors" on the Website's "About" page. Deny the rest.
- 36. Admit that the Exhibit D attached to the Complaint appears to be a true and correct copy of the page at one point accessible at <a href="https://www.comicbookmovie.com/about/">https://www.comicbookmovie.com/about/</a>. Deny the rest.
  - 37. Admit.

#### **Defendant Mark Cassidy**

38. Admit that the CBM profile for RorMachine states that profile has been a member since November 9, 2008. Deny the rest.

- 39. Admit that Cassidy has posted content to the Website under the username "RorMachine." Defendants lack knowledge or information sufficient to form a belief about whether other individuals also post under the username RorMachine or whether Cassidy posts to the Website under other usernames and therefore denies the remaining allegations of this paragraph.
- 40. Admit that the Exhibit E attached to the Complaint appears to be a true and correct copy of the page at one point accessible <a href="https://www.comicbookmovie.com/user/RorMachine">https://www.comicbookmovie.com/user/RorMachine</a>. Deny the rest.
- 41. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 42. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 43. Admit that CBM has paid Cassidy under its publicly available contributor program.

  Deny the rest.
- 44. Admit that the user RorMachine has the ability to make posts to the Website subject to the automated and manual review processes for content published on the website by RorMachine and other users. Deny the rest.
- 45. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 46. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.

#### **Defendant Joshua Wilding**

- 47. Admit that the CBM profile for JoshWilding states that profile has been a member since March 13, 2009. Deny the rest.
- 48. Admit that Wilding has posted content to the Website under the username "JoshWilding." Defendants lack knowledge or information sufficient to form a belief about whether other individuals also post under the username JoshWilding or whether Mr. Wilding posts to the Website under other usernames and therefore denies the remaining allegations of this paragraph.
- 49. Admit that the Exhibit H attached to the Complaint appears to be a true and correct copy of the page at one point accessible <a href="https://www.comicbookmovie.com/user/JoshWilding">https://www.comicbookmovie.com/user/JoshWilding</a>. Deny the rest.
- 50. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 51. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 52. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 53. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 54. Admit that CBM has paid Wilding under its publicly available contributor program.

  Deny the rest.

55. Admit that the user JoshWilding has the ability to make posts to the Website subject to the automated and manual review processes for content published on the website by JoshWilding and other users. Deny the rest.

56. Deny.

#### **Defendants' Alleged Conduct**

- 57. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph. Defendants expressly deny the allegation that the CBM website displayed unlicensed copies of any asserted copyrighted work.
- 58. Admit the Website contained an article titled "STAR WARS: THE LAST JEDI Actress Laura Dern Shares New Image of Vice Admiral Amilyn Holdo" dated October 18, 2017. Deny the rest.
- 59. Admit the Website contained an article titled "STAR WARS: THE LAST JEDI International TV Spot Features Benicio Del Toro As The Mysterious DJ" dated November 20, 2017. Deny the rest.
- 60. Admit the Website contained an article titled "STAR WARS: THE LAST JEDI's Mark Hamill Shares A Lovely Tribute to Carrie Fisher One Year After Her Passing" dated December 27, 2017. Deny the rest.
- 61. Admit the Website contained an article titled "Billie Lourd Shares a Touching Tribute to Carrie Fisher On The Second Anniversary Of Her Passing" dated December 27, 2018. Deny the rest.

- 62. Admit that the Website contained an article titled "STAR WARS: THE RISE OF SKYWALKER 12 Biggest Reveals And Spoilers From Vanity Fair's Cover Story" dated May 22, 2019. Deny the rest.
- 63. Admit that the Website contained an article titled "STAR WARS: THE RISE OF SKYWALKER Behind The Scenes Video Features New Aliens And Cast Interviews" dated May 22, 2019. Deny the rest
- 64. Admit that the Website contained an article titled "STAR WARS: THE RISE OF SKYWALKER Has A Very Interesting Alternate Title In Japan" dated June 25, 2019. Deny the rest.
- 65. Admit that the Website contained an article titled "STAR WARS: THE RISE OF SKYWALKER Star Daisy Ridley Promises A 'Brilliant End' To The Story" dated June 26, 2019. Deny the rest.
- 66. Admit that the Website contained an article titled "STAR WARS: THE RISE OF SKYWALKER's Runtime Possible [sic] Revealed Along With Some Potential SPOILERS" dated August 12, 2019. Deny the rest.
- 67. Admit that the Website contained an article titled "STAR WARS: THE RISE OF SKYWALKER Rey And Kylo Ren Clash On New Empire Magazine Covers" dated September 27, 2019. Deny the rest.
- 68. Admit that the Website contained an article titled "STAR WARS: THE RISE OF SKYWALKER Final Trailer Reportedly Scheduled For October 21" dated October 10, 2019. Deny the rest.

- 69. Admit that the Website contained an article titled "STAR WARS: THE RISE OF SKYWALKER's Oscar Issacs Blames 'Disney Overlords' For No Poe/Finn Romance" dated December 26, 2019. Deny the rest.
- 70. Admit that the Website contained an article titled "STAR WARS: THE RISE OF SKYWALKER Remains #1 At The Box Office As It Passes \$900M Worldwide" dated January 5, 2020. Deny the rest.
- 71. Admit that the Website contained an article titled "Luke Skywalker's Big STAR WARS: THE RISE OF SKYWALKER Scene Was The Result Of Reshoots" dated January 7, 2020. Deny the rest.
- 72. Admit that the Website contained an article titled "STAR WARS: THE RISE OF SKYWALKER Passes \$500 Million At The Domestic Box Office" dated January 26, 2020. Deny the rest.
- 73. This paragraph does not require a response. To the extent a response is required, Defendants deny the allegations in this paragraph and deny that "Infringing Articles" is a proper or correct shorthand for any of the articles on CBM's Website, including the articles referenced in paragraphs 58-72 above.
  - 74. Deny.
- 75. Admit that the articles identified in paragraphs 58-72 contained advertisements and generated limited revenue for CBM. Deny the rest.
  - 76. Deny.

#### FIRST CAUSE OF ACTION COPYRIGHT INFRINGEMENT 17 U.S.C. § 101 et seq.

- 77. Defendants incorporate by reference all of the preceding paragraphs of this Complaint as though fully stated herein.
- 78. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 79. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
  - 80. Deny.
  - 81. Deny.
  - 82. Deny.
  - 83. Deny.
- 84. Defendants lack knowledge or information sufficient to form a belief about the truth of the statement and therefore denies the allegations in this paragraph.
- 85. This paragraph does not require a response. To the extent a response is required, Defendants deny the allegations in this paragraph.

#### **EXPRESS DENIAL**

Except as expressly admitted herein, CBM denies generally and specifically, each and every allegation set forth in the Complaint, including all allegations contained in the separate Prayer for Relief and any of the underlying factual assumptions or assertions made in any allegation that is hereby denied.

#### AFFIRMATIVE DEFENSES

#### AFFIRMATIVE DEFENSE NO. 1

Trunk Archive fails to state claims for which relief can be granted.

#### AFFIRMATIVE DEFENSE NO. 2

Trunk Archive's claims are barred because there is no damage which stems directly or indirectly from any conduct complained of in the Complaint.

#### AFFIRMATIVE DEFENSE NO. 3

Trunk Archive's claims are barred because they run contrary to public policy.

#### AFFIRMATIVE DEFENSE NO. 4

Trunk Archive's claims are barred by Trunk Archive's failure to mitigate damages (should any damages exist).

#### AFFIRMATIVE DEFENSE NO. 5

Trunk Archive's claims are barred by the Safe Harbor provisions of the Digital Millennium Copyright Act because the CBM is a service provider and the accused content was posted, stored, transmitted, or otherwise made available at the direction of a user.

#### AFFIRMATIVE DEFENSE NO. 6

Trunk Archive's claims are barred by the doctrine of collateral estoppel, res judicata, issue preclusion, claim preclusion, and claim splitting.

#### AFFIRMATIVE DEFENSE NO. 7

Trunk Archive's claims are barred because neither CBM nor Nathan Best had actual knowledge of the alleged infringement of knowledge of facts or circumstances from which infringing activity is apparent.

#### AFFIRMATIVE DEFENSE NO. 8

Trunk Archive's claims are barred because neither CBM nor Nathan Best materially contributed to any alleged infringement.

#### AFFIRMATIVE DEFENSE NO. 9

Trunk Archive's claims are barred because neither CBM nor Nathan Best knew or intended for their actions to lead to infringement of any of Trunk Archive's copyrights.

#### **AFFIRMATIVE DEFENSE NO. 10**

Trunk Archive's claims are barred because CBM acted expeditiously to remove and/or disable access to the photographs at issue upon obtaining knowledge or awareness of the alleged infringement.

#### **AFFIRMATIVE DEFENSE NO. 11**

Trunk Archive's claims are barred because Trunk Archive did not submit a compliant DMCA take-down notice in connection to the photographs at issue.

#### **AFFIRMATIVE DEFENSE NO. 12**

Trunk Archive's claims are barred because the photographs at issue were not stored and/or did not reside on a system or network controlled or operated by CBM.

#### **AFFIRMATIVE DEFENSE NO. 13**

Trunk Archive's claims are barred because the alleged damages, if any, were proximately caused by act or omissions, negligence, or intentional acts by third parties over whom CBM had no control or right of control or, if CBM had any right of control, were acting beyond the scope of any relationship with CBM, or such damages were caused by conditions or events over which CBM had no control or right of control.

#### **AFFIRMATIVE DEFENSE NO. 14**

Trunk Archive's claims are barred because of Trunk Archive's own bad faith or unlawful actions.

#### AFFIRMATIVE DEFENSE NO. 15

Trunk Archive's claims are barred under the doctrine of unjust enrichment.

#### **AFFIRMATIVE DEFENSE NO. 16**

Trunk Archive's claims are barred because neither CBM nor Nathan Best's infringement, if there was infringement, was malicious, deliberate, consciously wrongful, or done in bad faith.

#### AFFIRMATIVE DEFENSE NO. 17

Trunk Archive's claims are barred under the doctrine of unclean hands.

#### **AFFIRMATIVE DEFENSE NO. 18**

Trunk Archive's claims are barred because CBM and Nathan Best acted in good faith and were justified their actions.

#### **AFFIRMATIVE DEFENSE NO. 19**

Trunk Archive's claims are barred because Trunk Archive inflicted its own harm and through its acts or omissions was the sole cause or the proximate cause of the damages complained.

#### **AFFIRMATIVE DEFENSE NO. 20**

Trunk Archive's claims are barred because neither CBM nor Nathan Best had the right and ability to supervise the allegedly infringing activity sufficient to confer vicarious liability for the allegedly infringing activity.

#### **AFFIRMATIVE DEFENSE NO. 21**

Trunk Archive's claims are barred because neither CBM nor Nathan Best had a direct financial interest in the allegedly infringing activity sufficient to confer vicarious liability for the allegedly infringing activity.

#### **AFFIRMATIVE DEFENSE NO. 22**

Trunk Archive's claims are barred because of the equitable doctrines of laches and waiver.

#### RESERVATION OF DEFENSES

Defendants reserve their rights to add further affirmative defenses that may be discovered during the litigation.

#### **DEFENDANTS' PRAYER FOR RELIEF**

WHEREFORE Defendants CBM and Nathan Best respectfully request:

- 1. Entry of judgment that Defendants have not directly, vicariously, or contributorily infringed any copyright owned or asserted by Trunk Archive;
- 2. Entry of judgment that Defendants have not induced infringement of any copyright owned or asserted by Trunk Archive;
- 3. Entry of judgement that Defendants have not willfully infringed any copyright owned or asserted by Trunk Archive;
  - 4. Entry of judgment for costs and reasonable attorney fees incurred by Defendants; and
  - 5. Such other and further relief as the Court may deem appropriate.

#### **COUNTERCLAIM**

Defendants and Counterclaim-Plaintiffs Best Little Sites, LLC d/b/a ComicBookMovie.com ("CBM") and Nathan Best ("Best") state their counterclaim against Plaintiff and Counterclaim-Defendant Great Bowery, Inc. d/b/a Trunk Archive ("Trunk Archive") as follows:

#### NATURE OF ACTION

1. CBM seeks a declaratory judgment that CBM and its users are not liable to Trunk Archive for infringement of copyright law and, in the alternative, declaration of appropriate copyright remedies under the U.S. Copyright Act, 17 U.S.C. § 106, and an award of damages, attorneys' fees and costs.

#### **PARTIES**

- 2. Plaintiff is a Utah limited liability company duly organized and existing under the laws of Utah, with a principal place of business at 237 E. Lake View Dr., Vineyard, Utah 84059.
- 3. Upon information and belief, Defendant Great Bowery, Inc. d/b/a Trunk Archive, is a Delaware corporation duly organized by law, having a principal place of business at 466 Broome Street, 4th Floor, New York, New York, 10013. At all times material hereto, Trunk Archive has been a division or a part of Great Bowery, Inc. and has offices at 190 Bowery, New York, New York 10012.
- 4. Upon information and belief, Trunk Archive represents approximately nine hundred (900) photographers and it has access to hundreds of thousands of images covering fashion, celebrity, beauty, lifestyle, still life, design, architecture and travel. Upon further information and belief, Trunk Archive is in the business of licensing photographs to its clients, which were taken by various commercial and fine art photographers for use in the entertainment, publishing and fashion industries.

Upon further information and belief, Trunk Archive conducts business on an international basis including in the District of Utah.

#### **JURISDICTION AND VENUE**

- 5. The Court has jurisdiction under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202 and under the laws of the United States concerning actions relating to copyright, 28 U.S.C. § 1338(a).
  - 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
- 7. This Court has personal jurisdiction over Trunk Archive because Trunk Archive conducts business transactions in this State. Trunk Archive has solicited a copyright license agreement with CBM in this State.
- 8. A substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this Judicial District. Venue therefore lies in the United States District for the District of Utah.

## FACTUAL BACKGROUND www.ComicBookMovie.com

- 9. CBM owns and operates ComicBookMovie.com. This website is a publicly available site where fans and other users can post text, images, and comments related to movies based on comic books and other entertainment in that genre.
  - 10. CBM is operated and maintained by its sole owner, Nathan Best.
  - 11. CBM has a limited staff of two employees who manage social media profiles for CBM.
  - 12. The articles on CBM are generated and posted by third-party users of CBM's website.
- 13. CBM has had a Designated Agent under the Digital Millennium Copyright Act ("DMCA") at all material times.

- 14. CBM has a Copyright Policy published on its website providing instructions, address, and a form through which users can submit DMCA takedown requests.
- 15. Every user-generated post on CBM's website includes language related to CBM's copyright and DMCA policies, including a link that users can use to submit DMCA takedown requests of allegedly infringing material.
- 16. CBM has Community Guidelines posted on its website that prohibit users from posting content that infringes on the intellectual property rights of others.
- 17. CBM has Terms of Service posted on its website that prohibit users from posting content that violates CBM's Copyright and Trademark policies.
- 18. CBM has a policy against repeat offenders of its Copyright Policy which is publicly accessible on its website.
- 19. Before users can publish articles on CBM, they must consent to CBM's policies which prohibit copyright infringement.
- 20. CBM does not direct users regarding the content of their articles, the quantity of their articles, or the timing of their articles.

#### The Subject Images

- 21. Trunk Archive has claimed that CBM's Website displayed eighteen photographs allegedly taken by Annie Liebovitz.
- 22. Trunk Archive has described and identified these photographs in paragraph 18 of its Complaint: a photograph of actress Laura Dern as Vice Admiral Amilyn Holdo; a photograph of actor Benicio Del Toro as DJ; a photograph of actors Mark Hamill and Carrie Fisher as Luke Skywalker and Leia Organa; a photograph of actress Carrie Fisher and her daughter Billie Lourd as

Leia Organa and Kaydel Ko Connix; a photograph of actors Oscar Isaacs, and Billy Dee Williams as Poe Dameron and Lando Calrissian aboard the Millennium Falcon with Chewbacca and BB-8; a photograph of actor Mark Hamil as Luke Skywalker with R2-D2; a photograph of actors John Boyega and Naomi Ackle as Finn and Jannah; a photograph of actors Domhnall Gleeson and Richard E. Grant as General Hux and Allegiant General Pryde; eight photographs of behind the scenes production of Star Wars: The Rise of Skywalker; a photograph of actors Adam Driver and Daisy Ridley as Kylo Ren and Rey; and a photograph of actors Oscar Issacs and John Boyega as Poe Dameron and Finn. Collectively, these images will be referred to as the "Subjet Images."

- 23. The Subject Images were displayed on CBM's website by embedding the image and linking back to a third-party server that was not owned or controlled by CBM.
- 24. The Subject Images are not and were not stored on servers belonging to or controlled by CBM or Nathan Best.
- 25. The Subject Images were posted by CBM users who were not owners of CBM or employees of CBM or Nathan Best.
- 26. The Subject Images were not posted on CBM's website at the direction of CBM or Nathan Best.
- 27. Neither CBM nor Nathan Best had actual knowledge that the Subject Images were posted until they received the Complaint in this litigation.
- 28. Neither CBM nor Nathan Best had actual knowledge that the Subject Images were infringing or allegedly infringing until they received the Complaint in this litigation.
- 29. When CBM received the Complaint in this litigation, CBM immediately removed and disabled access to the Subject Images.

- 30. Neither CBM nor Nathan Best were aware of facts or circumstances from which it was apparent that the Subject Images were infringing.
- 31. CBM and Nathan Best obtained minimal (if any) monetary benefit directly or indirectly from the use of the Subject Images.

## FIRST CLAIM FOR RELIEF (Declaratory Judgment of No Copyright Infringement)

- 32. CBM and Nathan Best repeat and re-allege each of the allegations of this complaint as though fully set forth herein.
- 33. There is a substantial and continuing justiciable controversy between CBM, Nathan Best, and Trunk Archive as to Trunk Archive's right to threaten or maintain suit for infringement of the Subject Images by CBM, Nathan Best, or CBM's users, as to the validity, enforceability and scope of the alleged copyright in the Subject Images, and as to whether the Subject Images as used by CBM or its users infringes any valid and enforceable rights owned by Trunk Archive.
- 34. Upon information and belief, the Subject Images as posted by users on CBM's website do not infringe any valid and enforceable copyright owned by Trunk Archive.
- 35. In the alternative, if CBM's use of the Subject Images does infringe a copyright owned by Trunk Archive, CBM's use was not willful and remedies for such use should not exceed Market Value.
- 36. The Court should issue a declaratory judgment stating that Trunk Archive is without right or authority to threaten or to maintain suit against CBM or its users for alleged copyright infringement, that no valid and enforceable copyright is infringed by CBM or its customers based on its use of the Subject Images, or if infringement is found, it was not willful and any remedy should not exceed Market Value.

37. By reason of Defendants' wrongful allegations of infringement and other wrongdoing committed by Defendants as alleged herein, a declaratory judgment is necessary to resolve, clarify, and settle the respective rights and legal positions of the parties.

#### PRAYER FOR RELIEF

CBM and Nathan Best respectfully request judgment as follows:

- 1. Entry of judgment that Trunk Archive is without right or authority to threaten or to maintain suit against CBM, Nathan Best, or CBM'S users for alleged copyright infringement and that no valid and enforceable copyright is infringed by CBM or its customers based on its use of the Subject Images, or if infringement is found, it was not willful and any remedy should not exceed Market Value per Accused Image found to be infringed;
- 2. Entry of a preliminary and permanent injunction enjoining Trunk Archive, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Trunk Archive from threatening CBM, Nathan Best, or any of their agents, servants, employees, or customers with infringement litigation or charging any of them either verbally or in writing with copyright infringement;
- 3. Entry of judgment for costs and reasonable attorney fees incurred by CBM and Nathan Best; and
  - 4. Such other and further relief as the Court may deem appropriate.

#### **DEMAND FOR JURY TRIAL**

CBM and Nathan Best demand trial by jury for causes of action, claims, or issues in this action, claims, or issues in this action that are triable as a matter of right to a jury.

[Signature to follow]

Dated this 23rd day of June 2022.

KIMBALL ANDERSON

/s/ Robert E. Aycock
Robert E. Aycock
William B. Chadwick

Attorneys for Defendants and Counterclaim-Plaintiffs ComicBookMovie.com and Nathan Best

#### **CERTIFICATE OF SERVICE**

I certify that on June 23, 2022, I caused a true and correct copy of the foregoing **ANSWER** & **COUNTERCLAIM** to be filed via the Court's CM/ECF system, which directed service by email on all counsel of record.

/s/ Stephanie Hamilton

## Exhibit 45

Robert H. Scott (USB #10981)

**AKERMAN LLP** 

170 South Main Street, Suite 725 Salt Lake City, Utah 84101-1648

Telephone: 801.907.6900 Facsimile: 801.355.0294

Email: robert.scott@akerman.com

Caroline H. Mankey (pro hac vice)

AKERMAN LLP

601 West Fifth Street, Suite 300 Los Angeles, California 90071 Telephone: (213) 533-5949

Facsimile: (213) 627-6342

Email: caroline.mankey@akerman.com

Attorneys for Defendants Mark Cassidy and Joshua Wilding

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

GREAT BOWERY, d/b/a TRUNK ARCHIVE,

Plaintiff,

V.

BEST LITTLE SITES, d/b/a www.comicbookmovie.com; NATHAN BEST; MARK CASSIDY; JOSHUA WILDING; and DOES 1 through 10, inclusive,

Defendants.

### DEFENDANT JOSHUA WILDING'S ANSWER TO COMPLAINT

Case No. 2:21-cv-00567-JNP-JCB

Judge Jill N. Parrish

Magistrate Judge Jared C. Bennett

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant Joshua Wilding ("Defendant"), for himself alone and for no other defendant, respectfully submits the following answer and affirmative defenses to the Complaint by Plaintiff Great Bowery d/b/a Trunk Archive ("Plaintiff").

#### **PARTIES**

- 1. Defendant lacks personal knowledge or information sufficient to form a belief as to Plaintiff's organization status or place of business.
- 2. Defendant lacks personal knowledge or information sufficient to form a belief as to Defendant Best Little Sites, LLC's organization status or principal place of business.
- 3. Defendant admits that Defendant Nathan Best is an individual, but lacks personal knowledge or information sufficient to form a belief as to Mr. Best's residential address.
  - 4. Admit.
  - 5. Admit.
- 6. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that any of the remaining allegations contained in this paragraph can be considered factual assertions, Defendant lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

#### JURISDICTION AND VENUE

7. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that any of the remaining allegations contained in this paragraph can be considered factual assertions, Defendant lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

- 8. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that the allegation contained in this paragraph can be considered a factual assertion, Defendant denies such allegation.
- 9. This paragraph consists of legal conclusions that do not require a response or denial.
  To the extent that the allegation contained in this paragraph can be considered a factual assertion,
  Defendant denies such allegation.
- 10. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that the allegation contained in this paragraph can be considered a factual assertion, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation of this paragraph and on that basis denies such allegation.
- This paragraph consists of legal conclusions that do not require a response or denial.

  To the extent that the allegation contained in this paragraph can be considered a factual assertion,

  Defendant denies such allegation.

#### FACTUAL BACKGROUND

- 12. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
- 13. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

- 14. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
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such allegation.

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to the truth of each and every allegation of this paragraph and on that basis denies each and every

such allegation.

24. Defendant lacks personal knowledge or information sufficient to form a belief as

to the truth of each and every allegation of this paragraph and on that basis denies each and every

such allegation.

25. Admit.

26. Admit.

27. Admit.

28. Defendant lacks personal knowledge or information sufficient to form a belief as

to the truth of each and every allegation of this paragraph and on that basis denies each and every

such allegation.

29. Defendant lacks personal knowledge or information sufficient to form a belief as

to the truth of each and every allegation of this paragraph and on that basis denies each and every

such allegation.

30. Admit.

- 31. Defendant admits that CBM solicits paid contributors to generate content, but denies that CBM solicits contributors to edit and moderate content, for the CBM website.
  - 32. Deny.
- 33. Defendant admits that paid contributors are compensated each month, but denies that contributors are eligible for bonus and other incentives based on the content they create to CBM's Website.
- 34. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
  - 35. Admit.
- 36. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
  - 37. Admit.
- 38. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
  - 39. Admit.
- 40. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

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to the truth of each and every allegation of this paragraph and on that basis denies each and every

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such allegation.

47. Admit.

48. Admit.

49. Admit.

50. Deny.

- 51. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
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- 53. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
- 54. Defendant admits that he is a contributor to the Website, but denies that he is a paid editor.
- 55. Defendant admits that he is expressly authorized by CBM to create content, but denies that he is expressly authorized by CBM to edit content, for the Website.
  - 56. Admit.
- 57. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
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- 75. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
  - 76. Deny.

#### FIRST CAUSE OF ACTION

- 77. Defendant incorporates by this reference each and every admission and denial set forth above, inclusive, as though fully stated herein.
- 78. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
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  - 84. Deny.
- 85. Defendant admits that Plaintiff is seeking a declaration and injunction, but denies each and every other allegation in this paragraph.

#### PRAYER FOR RELIEF

86. Defendant denies that Plaintiff is entitled to any of the relief sought in its Prayer for Relief.

#### **AFFIRMATIVE DEFENSES**

#### AFFIRMATIVE DEFENSE NO. 1

Plaintiff fails to state claims for which relief can be granted.

#### <u>AFFIRMATIVE DEFENSE NO. 2</u>

Plaintiff's claims are barred because there is no damage which stems directly or indirectly from any conduct complained of in the Complaint.

#### **AFFIRMATIVE DEFENSE NO. 3**

Plaintiff's claims are barred because they run contrary to public policy.

Plaintiff's claims are barred by Plaintiff's failure to mitigate damages (should any damages exist).

#### **AFFIRMATIVE DEFENSE NO. 5**

Plaintiff's claims are barred by the Safe Harbor provisions of the Digital Millennium Copyright Act because the CBM is a service provider and the accused content was posted, stored, transmitted, or otherwise made available at the direction of a user.

#### **AFFIRMATIVE DEFENSE NO. 6**

Plaintiff's claims are barred by the doctrine of collateral estoppel, res judicata, issue preclusion, claim preclusion, and claim splitting.

#### <u>AFFIRMATIVE DEFENSE NO. 7</u>

Plaintiff's claims are barred because Defendant did not have actual knowledge of the alleged infringement or knowledge of facts or circumstances from which infringing activity is apparent.

#### AFFIRMATIVE DEFENSE NO. 8

Plaintiff's claims are barred because Defendant did not materially contribute to any alleged infringement.

#### AFFIRMATIVE DEFENSE NO. 9

Plaintiff's claims are barred because Defendant did not know or intend for his actions to lead to infringement of any of Plaintiff's copyrights.

Plaintiff's claims are barred because CBM acted expeditiously to remove and/or disable access to the photographs at issue upon obtaining knowledge or awareness of the alleged infringement.

#### AFFIRMATIVE DEFENSE NO. 11

Plaintiff's claims are barred because Plaintiff did not submit a compliant DMCA takedown notice in connection to the photographs at issue.

#### **AFFIRMATIVE DEFENSE NO. 12**

Plaintiff's claims are barred because the photographs at issue were not stored and/or did not reside on a system or network controlled or operated by Defendant.

#### **AFFIRMATIVE DEFENSE NO. 13**

Plaintiff's claims are barred because the alleged damages, if any, were proximately caused by act or omissions, negligence, or intentional acts by third parties over whom Defendant had no control or right of control or, if Defendant had any right of control, were acting beyond the scope of any relationship with Defendant, or such damages were caused by conditions or events over which Defendant had no control or right of control.

#### **AFFIRMATIVE DEFENSE NO. 14**

Plaintiff's claims are barred because of Plaintiff's own bad faith or unlawful actions.

#### **AFFIRMATIVE DEFENSE NO. 15**

Plaintiff's claims are barred under the doctrine of unjust enrichment.

#### **AFFIRMATIVE DEFENSE NO. 16**

Plaintiff's claims are barred because Defendant's infringement, if there was infringement, was not malicious, deliberate, consciously wrongful, or done in bad faith.

Plaintiff's claims are barred under the doctrine of unclean hands.

#### **AFFIRMATIVE DEFENSE NO. 18**

Plaintiff's claims are barred because Defendant acted in good faith and was justified in his actions.

#### **AFFIRMATIVE DEFENSE NO. 19**

Plaintiff's claims are barred because Plaintiff inflicted its own harm and through its acts or omissions was the sole cause or the proximate cause of the damages complained.

#### **AFFIRMATIVE DEFENSE NO. 20**

Plaintiff's claims are barred because Defendant did not have the right and ability to supervise the allegedly infringing activity sufficient to confer vicarious liability for the allegedly infringing activity.

#### AFFIRMATIVE DEFENSE NO. 21

Plaintiff's claims are barred because Defendant did not have a direct financial interest in the allegedly infringing activity sufficient to confer vicarious liability for the allegedly infringing activity.

#### **AFFIRMATIVE DEFENSE NO. 22**

Plaintiff's claims are barred because of the equitable doctrines of laches and waiver.

#### **AFFIRMATIVE DEFENSE NO. 23**

Plaintiff is not entitled to any relief because it has engaged in copyright misuse, including for the purpose of stifling competition.

Defendant's actions and/or conduct are protected by the First Amendment of the United States Constitution.

#### **AFFIRMATIVE DEFENSE NO. 25**

Defendant's actions and/or conduct are protected by the fair use doctrine.

#### **AFFIRMATIVE DEFENSE NO. 26**

Plaintiff's claim for copyright infringement is barred, in whole or part, because its alleged copyrights are invalid.

#### **AFFIRMATIVE DEFENSE NO. 27**

Plaintiff is not entitled to any monetary relief because the damages sought by Plaintiff are entirely speculative.

#### **AFFIRMATIVE DEFENSE NO. 28**

Defendant's actions and/or conduct are protected by the doctrine of *de minimis* use.

#### **RESERVATION OF DEFENSES**

Defendant reserves his rights to add further affirmative defenses that may be discovered during the litigation.

#### **DEFENDANTS' PRAYER FOR RELIEF**

WHEREFORE Defendant respectfully requests:

- 1. Entry of judgment that Defendant has not directly, vicariously, or contributorily infringed any copyright owned or asserted by Plaintiff;
- 2. Entry of judgment that Defendant has not induced infringement of any copyright owned or asserted by Plaintiff;

- 3. Entry of judgment that Defendant has not willfully infringed any copyright owned or asserted by Plaintiff;
- 4. Entry of judgment for costs and reasonable attorney fees incurred by Defendant; and
  - 5. Such other and further relief as the Court may deem appropriate.

DATED this 15th day of July, 2022.

#### **AKERMAN LLP**

By: /s/ Robert H. Scott
Robert H. Scott (USB #10981)

Caroline H. Mankey (CA SBN 187302) (pro hac vice)
601 West Fifth Street, Suite 300
Los Angeles, California 90071
Telephone: (213) 533-5949

Email: <a href="mailto:caroline.mankey@akerman.com">caroline.mankey@akerman.com</a>
Attorneys for Defendants Mark Cassidy

and Joshua Wilding

#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of July, 2022, I caused a true and correct copy of the foregoing **DEFENDANT JOSHUA WILDING'S ANSWER TO COMPLAINT** to be filed via the Court's CM/ECF system which provided electronic notice of such filing to all persons registered to receive notice in this case.

/s/ Robert H. Scott

# Exhibit 46

Robert H. Scott (USB #10981)

**AKERMAN LLP** 

170 South Main Street, Suite 725 Salt Lake City, Utah 84101-1648

Telephone: 801.907.6900 Facsimile: 801.355.0294

Email: robert.scott@akerman.com

Caroline H. Mankey (pro hac vice)

AKERMAN LLP

601 West Fifth Street, Suite 300 Los Angeles, California 90071 Telephone: (213) 533-5949

Facsimile: (213) 627-6342

Email: caroline.mankey@akerman.com

Attorneys for Defendants Mark Cassidy and Joshua Wilding

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

GREAT BOWERY, d/b/a TRUNK ARCHIVE,

Plaintiff,

V.

BEST LITTLE SITES, d/b/a www.comicbookmovie.com; NATHAN BEST; MARK CASSIDY; JOSHUA WILDING; and DOES 1 through 10, inclusive,

Defendants.

### DEFENDANT MARK CASSIDY'S ANSWER TO COMPLAINT

Case No. 2:21-cv-00567-JNP-JCB

Judge Jill N. Parrish

Magistrate Judge Jared C. Bennett

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant Mark Cassidy ("Defendant"), for himself alone and for no other defendant, respectfully submits the following answer and affirmative defenses to the Complaint by Plaintiff Great Bowery d/b/a Trunk Archive ("Plaintiff").

#### **PARTIES**

- 1. Defendant lacks personal knowledge or information sufficient to form a belief as to Plaintiff's organization status or place of business.
- 2. Defendant lacks personal knowledge or information sufficient to form a belief as to Defendant Best Little Sites, LLC's organization status or principal place of business.
- 3. Defendant admits that Defendant Nathan Best is an individual, but lacks personal knowledge or information sufficient to form a belief as to Mr. Best's residential address.
  - 4. Admit.
- 5. Defendant admits that Defendant Joshua Wilding is an individual, lacks personal knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and on that basis denies each and every such allegation..
- 6. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that any of the remaining allegations contained in this paragraph can be considered factual assertions, Defendant lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

#### **JURISDICTION AND VENUE**

7. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that any of the remaining allegations contained in this paragraph can be considered factual assertions, Defendant lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

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  To the extent that the allegation contained in this paragraph can be considered a factual assertion,
  Defendant denies such allegation.
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- 11. This paragraph consists of legal conclusions that do not require a response or denial.

  To the extent that the allegation contained in this paragraph can be considered a factual assertion,

  Defendant denies such allegation.

#### FACTUAL BACKGROUND

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27. Admit.

28. Admit.

29. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

30. Admit.

31. Admit.

32. Admit.

33. Defendant admits that paid contributors are compensated each month, but denies that contributors are eligible for bonus and other incentives based on the content they create to CBM's Website.

34. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

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- 42. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
- 43. Defendant admits that he is a contributor to the Website, but denies that he is a paid editor.
- 44. Defendant admits that he is expressly authorized by CBM to create content for the Website, but denies that he is authorized by CBM to edit any content other than his own.
  - 45. Admit.
  - 46. Admit.
- 47. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.
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#### PRAYER FOR RELIEF

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#### AFFIRMATIVE DEFENSES

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#### AFFIRMATIVE DEFENSE NO. 11

Plaintiff's claims are barred because Plaintiff did not submit a compliant DMCA takedown notice in connection to the photographs at issue.

#### **AFFIRMATIVE DEFENSE NO. 12**

Plaintiff's claims are barred because the photographs at issue were not stored and/or did not reside on a system or network controlled or operated by Defendant.

#### AFFIRMATIVE DEFENSE NO. 13

Plaintiff's claims are barred because the alleged damages, if any, were proximately caused by act or omissions, negligence, or intentional acts by third parties over whom Defendant had no control or right of control or, if Defendant had any right of control, were acting beyond the scope of any relationship with Defendant, or such damages were caused by conditions or events over which Defendant had no control or right of control.

Plaintiff's claims are barred because of Plaintiff's own bad faith or unlawful actions.

#### **AFFIRMATIVE DEFENSE NO. 15**

Plaintiff's claims are barred under the doctrine of unjust enrichment.

#### **AFFIRMATIVE DEFENSE NO. 16**

Plaintiff's claims are barred because Defendant's infringement, if there was infringement, was not malicious, deliberate, consciously wrongful, or done in bad faith.

#### **AFFIRMATIVE DEFENSE NO. 17**

Plaintiff's claims are barred under the doctrine of unclean hands.

#### **AFFIRMATIVE DEFENSE NO. 18**

Plaintiff's claims are barred because Defendant acted in good faith and was justified in his actions.

#### **AFFIRMATIVE DEFENSE NO. 19**

Plaintiff's claims are barred because Plaintiff inflicted its own harm and through its acts or omissions was the sole cause or the proximate cause of the damages complained.

#### **AFFIRMATIVE DEFENSE NO. 20**

Plaintiff's claims are barred because Defendant did not have the right and ability to supervise the allegedly infringing activity sufficient to confer vicarious liability for the allegedly infringing activity.

#### **AFFIRMATIVE DEFENSE NO. 21**

Plaintiff's claims are barred because Defendant did not have a direct financial interest in the allegedly infringing activity sufficient to confer vicarious liability for the allegedly infringing activity.

Plaintiff's claims are barred because of the equitable doctrines of laches and waiver.

#### **AFFIRMATIVE DEFENSE NO. 23**

Plaintiff is not entitled to any relief because it has engaged in copyright misuse, including for the purpose of stifling competition.

#### AFFIRMATIVE DEFENSE NO. 24

Defendant's actions and/or conduct are protected by the First Amendment of the United States Constitution.

#### **AFFIRMATIVE DEFENSE NO. 25**

Defendant's actions and/or conduct are protected by the fair use doctrine.

#### **AFFIRMATIVE DEFENSE NO. 26**

Plaintiff's claim for copyright infringement is barred, in whole or part, because its alleged copyrights are invalid.

#### **AFFIRMATIVE DEFENSE NO. 27**

Plaintiff is not entitled to any monetary relief because the damages sought by Plaintiff are entirely speculative.

#### **AFFIRMATIVE DEFENSE NO. 28**

Defendant's actions and/or conduct are protected by the doctrine of de minimis use.

#### RESERVATION OF DEFENSES

Defendant reserves his rights to add further affirmative defenses that may be discovered during the litigation.

#### **DEFENDANTS' PRAYER FOR RELIEF**

WHEREFORE Defendant respectfully requests:

- 1. Entry of judgment that Defendant has not directly, vicariously, or contributorily infringed any copyright owned or asserted by Plaintiff;
- 2. Entry of judgment that Defendant has not induced infringement of any copyright owned or asserted by Plaintiff;
- 3. Entry of judgment that Defendant has not willfully infringed any copyright owned or asserted by Plaintiff;
- 4. Entry of judgment for costs and reasonable attorney fees incurred by Defendant; and
  - 5. Such other and further relief as the Court may deem appropriate.

DATED this 15th day of July, 2022.

#### **AKERMAN LLP**

By: /s/ Robert H. Scott
Robert H. Scott (USB #10981)

Caroline H. Mankey (CA SBN 187302) (pro hac vice) 601 West Fifth Street, Suite 300 Los Angeles, California 90071 Telephone: (213) 533-5949 Email: caroline.mankey@akerman.com

Attorneys for Defendants Mark Cassidy

and Joshua Wilding

#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of July, 2022, I caused a true and correct copy of the foregoing **DEFENDANT MARK CASSIDY'S ANSWER TO COMPLAINT** to be filed via the Court's CM/ECF system which provided electronic notice of such filing to all persons registered to receive notice in this case.

/s/ Robert H. Scott